



LAWS OF KENYA



BANKING ACT

CHAPTER 488

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CHAPTER 488

BANKING ACT

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CHAPTER 488

BANKING ACT

[Date of assent: 13th September, 1989.]

[Date of commencement: 1st November, 1989.]

An Act of Parliament to amend and consolidate the Law regulating the business of banking in Kenya and for connected purposes

[Act No. 9 of 1989, Act No. 20 of 1989, L.N. 342/1989, Act No. 8 of 1991, L.N. 443/1992, Act No. 4 of 1993, Act No. 13 of 1994, Act No. 8 of 1997, Act No. 10 of 1997, Act No. 5 of 1998, Act No. 4 of 1999, Act No. 9 of 2000, Act No. 7 of 2001, Act No. 15 of 2003, Act No. 6 of 2005, Act No. 9 of 2006, Act No. 10 of 2006, 19 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Banking Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**agency**” means an entity contracted by an institution and approved by the Central Bank to provide the services of the institution on behalf of the institution, in such manner as may be prescribed by the Central Bank:

Provided that where such entity is a co-operative society, prior approval to provide the services shall be sought from the Sacco Societies Regulatory Authority established under the SACCO Societies Act, 2008 (No. 14 of 2008).

“**assigned capital**” has the meaning given to it in section 7(4);

“**bank**” means a company which carries on, or proposes to carry on, banking business in Kenya but does not include the Central Bank;

“**banking business**” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques; and
- (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money;

“**Board**” means the Deposit Protection Fund Board established by section 36;

“**branch**” means any permanent premises, other than its head office, at which an institution transacts business in or outside Kenya;

“**capital**” means paid-up share capital or, in the case of an institution incorporated outside Kenya, its assigned capital;

“**convertible currency**” means currency which is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

“**core capital**” means permanent shareholders’ equity in the form of issued and fully paid-up shares of common stock, or in the case of foreign incorporated banks, of the assigned capital, plus all disclosed reserves, less goodwill or any other intangible assets;

“**current account**” means an account maintained by a bank for and in the name of, or in a name designated by, a customer of the bank into which money is paid by or for the benefit of such customer and on which cheques and other bills of exchange may be drawn by, and transfers and other banking transactions made on the instructions of, the customer;

“**disclosed reserves**” includes all reserves created or increased through share premiums, retained profits (after deducting all expenses, provisions, taxation and dividends) and general reserves if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“**financial business**” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice; and
- (b) the employing of money held on deposit or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money;

“**financial institution**” means a company, other than a bank, which carries on, or proposes to carry on, financial business and includes any other company which the Minister may, by notice in the *Gazette*, declare to be a financial institution for the purposes of this Act;

“**financial year**” means the financial year prescribed in section 20A;

“**institution**” means a bank or financial institution or a mortgage finance company;

“**land**” includes freehold and leasehold land in Kenya and all buildings and permanent improvements thereon;

“**licence**” means a licence granted under section 5;

“**members of the public**” means individuals, partnerships, corporate bodies and trustees or managers of trusts, pension and provident funds or other similar funds;

“**Minister**” means the Minister for the time being responsible for matters relating to Finance;

“**mortgage finance company**” means a company (other than a financial institution) which accepts from the members of the public, money—

- (a) on deposit repayable on demand or at the expiry of a fixed period or after notice; or

(b) on current account and payment on and acceptance of cheques, and is established for the purpose of employing such money in accordance with section 15;

“officer”, in relation to an institution, means a Director or any other person, by whatever name or title he may be called or described, who carries out or is empowered to carry out functions relating to the overall direction in Kenya of that institution or takes part in the general management thereof in Kenya;

“place of business” means any premises, other than the head office, including a branch, an agency or a mobile unit, or such other premises as may, from time to time, be prescribed by the Central Bank, at which an institution transacts banking or financial business in Kenya and which is open to the public.

“public entity” means the Government, a local authority or a **“public entity”** means the Government, a local authority or a public body declared by the Minister to be a public entity for the purposes of this Act;

“representative office” means an office established in Kenya under the provision of Part IX;

“significant shareholder” means a person, other than the Government or a public entity, who holds, directly or indirectly, or otherwise has a beneficial interest in, more than five percent of the share capital of an institution;

“significantly undercapitalized” in relation to an institution, means that the institution holds less than fifty percent of the capital requirements prescribed under section 18;

“supplementary capital” means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on banking premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank;

“the Central Bank” means the Central Bank of Kenya established by the Central Bank of Kenya Act (Cap. 491);

“total capital” means the total sum of core capital and supplementary capital;

“total deposit liabilities” means the total deposits in Kenya in any institution which are repayable on demand or after a fixed period or after notice;

“undercapitalized bank” means an institution that does not fully comply with the capital requirements prescribed in section 18;

“unimpaired reserves” means capital and revenue reserves not subject to any charge or other encumbrance or option or liable to reduction by payment of dividend or otherwise.

(2) For the purposes of this Act, “**associate**”—

- (a) in relation to a company or other body corporate means—
 - (i) its holding company or its subsidiary;
 - (ii) a subsidiary of its holding company;
 - (iii) a holding company of its subsidiary;
 - (iv) any person who controls the company or body corporate whether alone or with his associates or with other associates of it;
 - (v) any company in which an individual is a director;
- (b) in relation to an individual means—
 - (i) any member of his family;
 - (ii) any company or other body corporate controlled directly or indirectly, by him whether alone or with his associates; and
 - (iii) any associate of his associates,

and a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild and adopted child of the person concerned, and in case of an adopted child his adopter or adopters.

(3) For purposes of subsection (2), the term “**control**” includes—

- (a) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate; or
- (b) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of twenty *per centum* or more of the voting power of a company or body corporate, whether alone or with associates or with other associates of the company or body corporate.

[Act No. 10 of 1997, Sch. Act No. 4 of 1999, s. 76, Act No. 7 of 2001, s. 2, Act No. 6 of 2005, s. 43, Act No. 9 of 2006, s. 2, Act No. 10 of 2006, s. 40, Act No. 8 of 2009, s. 52, Act No. 10 of 2010, s. 63.]

PART II – LICENSING OF INSTITUTIONS

3. Restrictions on carrying on banking business, etc.

(1) No person shall in Kenya—

- (a) transact any banking business or financial business or the business of a mortgage finance company unless it is an institution or a duly approved agency conducting banking business on behalf of an institution which holds a valid licence;
- (b) unless it is a bank and has obtained the consent of the Central Bank, use the word “bank” or any of its derivatives or any other word indicating the transaction of banking business, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Kenya or make any representation whatsoever that it transacts banking business;

- (c) unless it is a financial institution or mortgage finance company and has obtained the consent of the Central Bank, use the word “finance” or any of its derivatives or any other word indicating the transaction of financial business or the business of a mortgage finance company, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Kenya or make any representation whatsoever that it transacts financial business:

Provided that—

- (a) the provisions of paragraphs (b) and (c) of this subsection shall not apply to investment banks licensed under section 11(3) of the Capital Markets Act (Cap. 485A); and
- (b) a person granted consent by the Central Bank under paragraph (b) or (c) and who does not obtain a licence within twelve months of such grant shall forthwith cease the use of those words.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

[Act No. 15 of 2003, s. 47, Act No. 9 of 2006, s. 3, Act No. 10 of 2006, s. 41, Act No. 9 of 2007, s. 63, Act No. 8 of 2009, s. 53.]

4. Application for licence

(1) Every institution intending to transact banking business, financial business or the business of a mortgage finance company in Kenya shall, before commencing such business, apply in writing to the Central Bank for a licence.

(2) *Deleted by Act No. 9 of 2006, s. 4(b).*

(3) The Central Bank shall, where it is satisfied as to the professional and moral suitability of persons proposed to manage or control the institution, certify that such persons are fit and proper persons to manage or control the institution.

(4) For the purposes of this section, the criteria for assessing the professional or moral suitability of persons proposed to manage or control an institution shall be as prescribed in the First Schedule.

(5) In considering an application for a licence, the Central Bank may require to be satisfied as to—

- (a) the financial condition and history of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control the institution;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served; and
- (f) the public interest which will be served by the granting of the licence.

(6) The Minister may, by notice in the *Gazette*, amend the First Schedule.

(7) If a person, other than the Government or a public entity, holds, directly or indirectly, or otherwise has a beneficial interest in, more than five percent of the share capital of an institution or if it is proposed that such a person shall so hold or have such a beneficial interest, that person shall be deemed, for the purpose of this section, to be a person proposed to manage or control the institution.

[Act No. 10 of 1997, Sch., Act No. 9 of 2006, s. 4.]

5. Licensing of institutions

(1) Subject to section 4, the Central Bank may, upon payment of the prescribed fee, grant a licence to an institution to carry on business.

(2) The Central Bank may endorse on a licence granted under this section such conditions as the Central Bank considers necessary and may from time to time add, vary or substitute such conditions as the Central Bank deems appropriate.

(2A) An institution which fails to commence business in Kenya within twelve months of the grant of a licence under this section shall, if it still proposes to transact business in Kenya, make fresh application under section 4.

(3) Unless revoked under section 6, a licence shall be valid for a period of twelve months beginning on the day it is granted and shall then expire:

Provided that where an application for its renewal is made under this section, the licence shall be deemed to continue to be in force until the application for renewal is determined and the licence is renewed.

(4) An application for the renewal of a licence shall be made in writing to the Central Bank, and may be made within the three months immediately preceding of the expiry of the licence.

(5) An application for the renewal of a licence shall be considered in accordance with section 4.

(6) Subject to subsections (4) and (5) the Central Bank may, upon payment of the prescribed fee, renew an institution's licence to carry on business.

(7) Where an application for the renewal of a licence is not lodged within the three months immediately preceding its expiry, the Central Bank may, on application, renew the licence on payment of an additional 50 percent of the fee plus an interest of 2 percent per month or part thereof, on the sum total of the licence fee and an additional 50 percent.

(8) Any fee or other amount payable under this section shall be paid into the Central Bank.

(9) An aggrieved party may appeal to the Minister from a decision of the Central Bank to refuse to renew a licence under subsection (6) or (7).

(10) A person may make an appeal under subsection (9) only within fifteen days after being notified of the refusal.

(11) The Central Bank shall be bound by the decision of the Minister on an appeal under subsection (9).

[Act No. 8 of 1991, s. 82, Act No. 13 of 1994, s. 2, Act No. 10 of 1997, Sch., Act No. 9 of 2006, s. 5, Act No. 8 of 2008, s. 66.]

6. Revocation of licence

(1) The Central Bank (Cap. 113) may, by notice in writing to the institution, revoke a licence if the institution—

- (a) ceases to carry on business in Kenya or goes into liquidation or is wound up or is otherwise dissolved; or
- (b) fails to comply with this Act, the Central Bank of Kenya Act (Cap. 491), or any rules, regulations, orders or directions issued under any of those Acts or any condition of a licence:

Provided that—

- (i) the Central Bank, before revoking a licence, shall give to the institution not less than twenty-eight days' notice in writing of the Central Bank's intention, and shall consider any representations made to the Central Bank in writing by the institution within that period before revoking the licence;
- (ii) the institution may, notwithstanding that its licence has been revoked under this subsection, continue to carry on its business for the purpose of winding up its affairs for such period as the Central Bank may determine so long as it does not accept new deposits, open new current accounts or make any loans or investments.

(2) Notwithstanding the revocation of a licence under this section, the Central Bank may exercise any of the powers conferred on it under Part VII if it is necessary for the protection of the interests of the depositors.

(3) The Central Bank shall cause the name of every institution whose licence is revoked under this section to be published forthwith in the *Gazette*.

[Act No. 13 of 1994, s. 3, Act No. 4 of 1999, s. 77, Act No. 9 of 2006, s. 6.]

7. Minimum capital requirements

(1) A licence shall not be granted to an institution unless the institution meets the minimum capital requirements specified in the Second Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

(3) Every order made under subsection (2) shall be laid before the National Assembly without unreasonable delay, and unless a resolution approving the order is passed by the Assembly within twenty days on which it next sits after the order is so laid, it shall thenceforth be void, but without prejudice to anything previously done thereunder or to the issuing of a new order.

(4) The board of management or other controlling authority of an institution incorporated outside Kenya shall, in addition to meeting the minimum capital requirements specified in the Second Schedule, give an undertaking satisfactory to the Minister to keep within Kenya at all times during the currency of its licence, out of its own funds, a capital assigned to its Kenya branches (in this Act referred to as "assigned capital") of such minimum amount as may be prescribed.

[Act No. 13 of 1994, s. 4.]

8. Location of places of business

(1) No institution shall open in Kenya a branch or a new place of business or change the location of a branch or an existing place of business in Kenya without the approval of the Central Bank.

(2) Before granting an approval under subsection (1), the Central Bank may require to be satisfied as to—

- (a) the history and financial condition of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of its management;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served and that the public interest will be served by the opening of a branch or a new place of business or, as the case may be, the change of location of the place of business.

(2A) If the opening or change for which approval has been given under subsection (1) does not occur within twelve months after the approval is given, the approval shall lapse.

(2B) Subsection (2A) shall not apply to an approval given before that subsection came into operation.

(3) No institution shall close any of its places of business in Kenya without first giving to the Central Bank six months' written notice of its intention to do so or such shorter period of notice as the Central Bank may allow.

(4) The Central Bank shall prescribe the manner in which approvals under this section shall be granted.

[Act No. 13 of 1994, s. 5, Act No. 9 of 2006, s. 7, Act No. 10 of 2010, s. 64.]

8A. Branches and subsidiaries

(1) No institution shall open a branch or establish a subsidiary outside Kenya, except with the prior approval of the Minister.

(2) An institution seeking approval under subsection (1) shall apply, in writing, to the Minister through the Central Bank.

(3) Before granting approval under subsection (1), the Minister may require to be satisfied as to—

- (a) the history and financial condition of the institution;
- (b) the adequacy of the institution's capital structure;
- (c) the viability and earning prospects of the proposed branch or subsidiary;
- (d) such other matter as may have a bearing on the institution or proposed branch or subsidiary as the Central Bank may require.

(4) An institution intending to close any of its branches or subsidiaries outside Kenya shall give notice in writing to the Minister, through the Central Bank of its intention, at least six months before the date of the intended closure, or within such shorter period as the Minister may, in any particular case, allow.

(5) Notwithstanding the provisions of this section, the Central Bank may, subject to such conditions or limitations as it may prescribe, permit an institution to provide such services as it may, in any particular case, specify, to its customers who are outside the country through banking institutions located outside Kenya.

[Act No. 10 of 2006, s. 42, Act No. 4 of 2012, s. 41.]

9. Amalgamations and transfers of assets and liabilities

(1) No amalgamation or arrangement which involves an institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of an institution to another person, shall have legal force except with the prior written approval of the Minister.

(2) The Minister may grant his approval under subsection (1) if—

- (a) he is satisfied that the transaction in question will not be detrimental to the public interest;
- (b) in the case of an amalgamation, the amalgamation is of institutions only; or
- (c) in the case of a transfer of assets and liabilities which entails the transfer by the transferor institution of the whole or any part of its business as an institution, such transfer is effected to another institution approved by the Minister for the purpose of the said transfer.

(3) Upon the coming into effect of a transaction effecting the amalgamation or acquisition of one institution by another institution, or effecting the transfer of all or part of the assets and liabilities of one financial institution to another institution pursuant to this section—

- (a) all the assets and liabilities of the amalgamating institutions or, in the case of a transfer of assets and liabilities, those assets and liabilities of the transferor institution that are transferred in terms of the transaction shall vest in and become binding upon the amalgamated institution or, as the case may be, the receiving institution;
- (b) the amalgamated institutions or, in the case of the transfer of assets and liabilities, the receiving institution shall have the same rights and be subject to the same obligations as those which the amalgamating institution or, as the case may be, the transferor institution may have had or to which they or it may have been subject immediately before the amalgamation or transfer;
- (c) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating institutions or, as the case may be, the transferor institution and in force immediately prior to the amalgamation or transfer, but excluding such agreements, appointments, transactions and documents that, by virtue of the terms and conditions of the amalgamation or transfer, are not to be retained in force, shall remain in full force and effect and shall be construed for all purposes

as if they had been entered into, made, drawn up or executed with, by or in favour of the amalgamated institution or, as the case may be, the receiving institution or person to whom the assets and liabilities in question are transferred; and

- (d) any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating institutions or, as the case may be, by the transferor institution, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated institution or, as the case may be, the receiving institution or person to whom such assets and liabilities are transferred, as security for future advances, facilities or services by that financial institution or person except where, in the case of such transfer, any obligation to provide such advances, facilities or services is not included in the transfer.

(4) Any amalgamation or arrangement or any arrangement for the transfer of assets and liabilities, shall be subject to—

- (a) confirmation at a general meeting of shareholders of each of the institutions concerned; or
- (b) in the case of a transaction effecting the transfer of assets and liabilities of one institution to another institution, to confirmation at a general meeting of shareholders of the transferor institution and the receiving institution and the notice convening such a meeting shall contain or have attached to it the terms and conditions or the relevant agreement or arrangement.

(5) Notice of the passing of the resolution confirming any amalgamation or arrangement, or any arrangement for the transfer of assets and liabilities, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the chairperson of the meeting at which such resolution was passed and by the secretary of the institution concerned shall be sent to the Central Bank by each of the institutions involved and after receipt of such notices from all the parties to the relevant agreement or arrangement, the Central Bank shall publish those notices.

(6) Upon the publication by the Central Bank of the notices referred to in subsection (5)—

- (a) of any amalgamation of two or more institutions, the licences of each of the amalgamating institutions shall be deemed to be cancelled and shall be withdrawn by the Central Bank, and on payment by the resulting institution of the prescribed licence fee, the Central Bank shall register such institution subject *mutatis mutandis* to the provisions of section 5 as an institution; or
- (b) of any arrangement for the transfer of all the assets and liabilities of an institution, the licence of such institution shall be deemed to be cancelled and shall be withdrawn by the Central Bank.

(7) Upon the licensing of an institution pursuant to subsection (6), the Central Bank shall issue a licence to the institution.

(8) The Registrar of Companies and the Registrar of Titles, and every officer or person in charge of a deed registry or any other relevant office shall, if in his office or in any register under his control—

- (a) there is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by; or
- (b) there is registered any share, stock, debenture or other marketable security in favour of; or
- (c) there has been issued any licence to or in favour of,

any amalgamating or transferor institution, and if satisfied—

- (i) that the Minister has approved the amalgamation or transfer pursuant to subsection (1); and
- (ii) that such amalgamation or transfer has been duly effected,

and upon production to him of any relevant deed, bond, share, stock, debenture, certificate, letter of appointment, licence or other document, make such endorsements thereon and effect such alterations in his registers as may be necessary to record the transfer of the relevant property, bond or other right, share, stock, debenture, marketable security, letter of appointment or licence and of any rights thereunder to the resulting institution or, as the case may be, to the receiving institution.

(9) No transfer fees, stamp duty, registration fees, licence duty or other charges shall be payable in respect of—

- (a) a transfer of assets and liabilities under subsection (3); or
- (b) any endorsement or alteration made to record such transfer, upon submission to the Registrar of Companies, Registrar of Titles or any other person referred to in subsection (8).

(10) The provisions of this section shall not affect the rights of any creditor or any institution which has amalgamated with or transferred all its assets and liabilities to any other institution or taken over all the assets and liabilities of any other institution, except to the extent provided in this section.

(11) In this section—

“amalgamation institutions” means the institutions contemplating effecting an amalgamation;

“receiving institution” means the institution to which assets and liabilities are transferred through a transaction effected under this section;

“resulting institution” means the institution resulting from an amalgamation effected under this section;

“transferor institution” means the institution which transfers its assets and liabilities to a receiving institution.

[Act No. 9 of 2000, s. 95, Act No. 9 of 2006, s. 8, Act No. 9 of 2007, s. 64.]

9A. Directors, Chief Executive Officers and significant shareholders to be fit and proper persons

(1) An institution shall ensure that no person is appointed or elected as a director or appointed as a senior officer unless the Central Bank has certified the person as a fit and proper person to manage or control the institution.

(2) A person shall ensure that the person does not become a significant shareholder of an institution unless the Central Bank has certified the person as a fit and proper person to manage or control the institution.

(3) For the purposes of certification under subsection (2), the Central Bank shall vet a significant shareholder—

- (a) when the shareholder initially becomes a significant shareholder after the commencement of this section;
- (b) when a new institution is applying for a licence to commence business under the provisions of this Act;
- (c) when new evidence becomes available to the Central Bank indicating that an already existing significant shareholder does not fulfil the fit and proper criteria as set out in Part B of the First Schedule.

(4) A significant shareholder, upon being determined by the Central Bank as not fulfilling the fit and proper criteria as set out in Part B of the First Schedule, shall—

- (a) cease to exercise all his voting rights immediately upon the institution being notified by the Central Bank in writing that the shareholder does not fulfil the fit and proper criteria as set out in Part B of the First Schedule; and
- (b) reduce the holding of shares to five per cent or less of the share capital in the institution within twelve months, or such longer period as the Central Bank may determine.

(5) The Central Bank may determine that a person who already is a director or senior officer of an institution is not a fit and proper person to manage or control the institution and upon the institution being notified in writing of that determination, the person shall, if he is a Director or senior officer, cease to hold office.

(6) For greater certainty, the Central Bank may, in the course of the annual renewal of a licence under section 5 of this Act, make a determination under subsection (5) of this section that a director or senior officer is not fit and proper to manage or control an institution notwithstanding any previous certification given by the Central Bank.

(7) In determining whether or not a person is a fit and proper person to manage or control an institution the Central Bank shall apply the criteria prescribed in the First Schedule to determine whether the Central Bank is satisfied as to the professional and moral suitability of the person.

(8) For the purposes of this section and of the First Schedule, “**senior officer**” means a person who manages or controls an institution licensed under the Act, and includes—

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager of a significant unit of an institution licensed under this Act;

- (b) a person with a similar level of position or responsibilities as a person described in paragraph (a).

[Act No. 9 of 2006, s. 9.]

PART III – PROHIBITED BUSINESS

10. Limit on advances, credits and guarantees

(1) An institution shall not in Kenya grant to any person or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceed twenty-five per cent of its core capital:

Provided that the Central Bank may authorize a mortgage finance company to permit the total value of the advances, credit facilities, financial guarantees or other liabilities in respect of any such person at any time to exceed 25 *per centum* of its capital by such *per centum* as the Central Bank may in each particular case prescribe.

(2) The provisions of this section shall not apply to transactions with a public entity, or to transactions between banks or between branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title to goods entitling some person to payment outside Kenya for imports.

(3) For the purposes of subsection (1), references to any person include that person and his associates; and—

- (a) the advances, credit facilities, financial guarantees and other liabilities of that person and his associates shall be aggregated for the calculation of their total value; and
- (b) the restriction imposed by subsection (1) shall apply to advances, credit facilities, financial guarantees and other liabilities to or in respect of that person and his associates.

(4) The provisions of subsection (1) shall not apply to any advance or credit facility granted, or any financial guarantee given, or any other liability incurred, by an institution on behalf of any person before the commencement of this section.

[Act No. 13 of 1994, s. 7, Act No. 4 of 1999, s. 78, Act No. 9 of 2006, s. 10.]

11. Restrictions on advances, credits and guarantees

(1) An institution shall not in Kenya—

- (a) grant or permit to be outstanding any advance or credit facility against the security of its own shares; or
- (b) grant or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any company (other than another institution) in which the institution holds, directly or indirectly, or otherwise has a beneficial interest in, more than twenty-five percent of the share capital of that company; or
- (c) grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates; or

- (d) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured—
 - (i) to any of its officers or significant shareholders or their associates; or
 - (ii) to any person of whom or of which any of its officers or significant shareholders has an interest as an agent, Director, manager or shareholder; or
 - (iii) to any person of whom or of which any of its officers or significant shareholders is a guarantor; or
- (e) grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility—
 - (i) is approved by the full board of directors of the institution upon being satisfied that it is viable;
 - (ii) is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution,and the institution shall notify the Central Bank of every approval given pursuant to subparagraph (i) of this paragraph, within seven days of such approval; or
- (f) grant or permit to be outstanding any advances or credit facilities or give any financial guarantees or incur any other liabilities to, or in favour of, or on behalf of, a person mentioned in paragraph (c), (d) or (e) and his associates amounting in the aggregate, for that person and all his associates, to more than twenty percent of the core capital of the institution; or
- (g) grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favour of, or on behalf of, its associates and the persons mentioned in paragraphs (c), (d) and (e) amounting in the aggregate to more than one hundred percent of the core capital of the institution; or
- (h) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of this Act.

(1A) In relation to conduct contemplated under paragraph (h) of subsection (1)—

“**fraudulent**” includes intentional deception, false and material representation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the institution with an intended gain to the officer of the institution or to a customer of the institution;

“**reckless**” includes—

- (a) transacting business beyond the limits set under this Act or the Central Bank of Kenya Act (Cap. 491);

- (b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;
- (c) failing to observe the institution's policies as approved by the Board of Directors; or
- (d) misuse of position or facilities of the institution for personal gain.

(2) The prohibitions contained in subsection (1) shall apply whether or not the advance, loan or credit facility in question is granted to any person alone or with others.

(3) Where an institution contravenes any of the provisions of this section—

- (a) all officers of an institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the advance, loan or credit facility:

Provided that in the case of an advance, loan or credit facility to a person other than a director of the institution or a person participating in the general management of the institution, an officer shall not be so liable if he shows that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or he took all reasonable steps to prevent it taking place;

- (b) the Central Bank may, in the case of an advance, loan or credit facility to a director of the institution, direct the removal of such director from the board of directors of the institution and may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility and the institution shall comply with every direction of the Central Bank under this paragraph forthwith.

(4) If any Director removed, or officer or other employee of an institution suspended under subsection (3) is aggrieved by such decision, he may apply to the High Court for determination of the matter and the High Court may confirm, reverse or modify the decision and make such other order in the circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the order, removal or suspension shall remain in effect.

(5) A director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forthwith be disqualified from holding office as such.

(6) An institution which—

- (a) fails to comply with any direction of the Central Bank under subsection (3)(b); or
- (b) permits a director who is disqualified by virtue of subsection (5) to continue holding office as such,

shall be guilty of an offence.

(7) Where an offence under subsection (6) continues, the institution shall, in addition to the penalty prescribed under section 49, be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues.

(8) The regulations under section 55 may govern the steps an institution is required to take to ensure that it does not, contrary to subsection (1)(f), permit to be outstanding anything described in that provision and, without limiting the generality of the foregoing, the regulations may impose time limits within which the steps must be taken.

[Act No. 5 of 1998, s. 57, Act No. 4 of 1999, s. 79, Act No. 9 of 2000, s. 96, Act No. 9 of 2006, s. 11.]

12. Restriction on trading and investments

An institution shall not—

- (a) engage, alone or with others, in wholesale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it; and any trading interest carried on by an institution at the commencement of this Act shall be disposed of by the institution within such time as the Central Bank may allow;
- (b) acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have a beneficial interest in, any financial, commercial, agricultural, industrial or other undertaking where the value of the institution's interest would exceed in the aggregate twenty-five per cent of the core capital of that institution:

Provided that—

- (i) an institution may take an interest in such an undertaking in satisfaction of a debt due to it but, if it does so, it shall dispose of the interest within such time as the Central Bank may allow;
- (ii) a shareholding in any corporation established for the purpose of promoting development in Kenya and approved by the Minister shall not be subject to the provisions of this paragraph;
- (c) purchase or acquire or hold any land or any interest or right therein except such land or interest as may be reasonably necessary for the purpose of conducting its business or for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe:

Provided that—

- (i) this paragraph does not prevent an institution from—
 - (A) letting part of any building which is used for the purpose of conducting its business; or
 - (B) securing a debt on land and, in the event of default in payment of the debt, holding the land for so long as, in the opinion of the Central Bank, is needed for the realization of the debt; or
 - (C) acquiring land for the purpose of its own development; and
- (ii) a shareholding in any corporation established for the purpose of promoting development on Kenya and approved by the

Minister; or in a foreign company which is licensed to carry on the business of the institution in its country of incorporation and approved by the Central Bank;

- (iii) approval granted by the Central Bank shall be subject to such conditions as the Central Bank may deem appropriate.

[Act No. 4 of 1999, s. 80, Act No. 9 of 2000, s. 97, Act No. 6 of 2005, s. 44, Act No. 10 of 2006, s. 43, Act No. 8 of 2009, s. 54.]

13. Restrictions on ownership of share capital of an institution

(1) No person other than—

- (a) another institution;
- (b) the Government of Kenya or the Government of a foreign sovereign State;
- (c) a State corporation within the meaning of the State Corporations Act (Cap. 446); or
- (d) a foreign company which is licensed to carry on the business of an institution in its country of incorporation,

shall hold, directly or indirectly, or otherwise have a beneficial interest in, more than twenty-five percent of the share capital of any institution.

(2) No financial institution or mortgage finance company shall acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have beneficial interest in, any bank.

(3) Where any share is held by a company, other body corporate or by a nominee on behalf of another person, the company, other body corporate or the nominee, as the case may be, shall disclose to the institution and to the Central Bank the full particulars of the individual who is the ultimate beneficial owner of the share.

(4) No institution shall transfer more than five percent of its share capital to an individual or an entity except with the prior written approval of the Central Bank.

[Act No. 4 of 1999, s. 81, Act No. 9 of 2000, s.n 98, Act No. 4 of 2012, s. 42.]

14. Restrictions on advances for purchase of land

(1) No institution, other than a mortgage finance company, shall make loans or advances for the purchase, improvement or alteration of land, so that the aggregate amount of those loans or advances exceeds forty percent of the amount of its total deposit liabilities.

(2) The Central Bank may authorize an institution to exceed the percentage specified in subsection (1) up to a maximum of seventy per cent.

(3) The provisions of this section shall not prevent an institution accepting a security over land for a loan or advance made in good faith for any other purpose.

[Act No. 10 of 2010, s. 65.]

15. Mortgage finance companies

- (1) A mortgage finance company shall make loans—
- (a) for the purpose of the acquisition, construction, improvement, development, alteration or adaptation for a particular purpose of land in Kenya; and
 - (b) the repayment of which, with interest and other charges, is secured by first mortgage or charge over land with or without additional security or personal or other guarantees.

(2) Subject to this Act, a mortgage finance company may grant other types of credit facilities against securities other than land and may engage in other prudent investment activities.

(3) *Deleted by Act No. 7 of 2001, s. 3.*

(4) *Deleted by Act No. 7 of 2001, s. 3.*

16. Restrictions on deposit-taking

(1) Subject to this section, no person, other than an institution which holds a valid licence or a duly approved agency conducting banking business on behalf of an institution, shall invite or accept deposits in the course of carrying on a deposit-taking business.

(2) For the purposes of this section, “**deposit**” means a sum of money paid on terms—

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security.

(3) For the purposes of subsection (2)(b), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if—

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property whether in a particular state of repair or otherwise.

(4) For the purposes of this section, “deposit” does not include—

- (a) a sum paid by the Central Bank or by an institution or the persons mentioned in section 54; or
- (b) a sum which is paid by a person to an associate of that person.

(5) For the purposes of this section, a business is a deposit-taking business if—

- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) Notwithstanding that paragraph (a) or (b) of subsection (5) applies to a business, it is not a deposit-taking business for the purposes of this section if—

- (a) the person carrying it on does not hold himself out as accepting deposits on a day-to-day basis; and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(7) For the purposes of subsection (5), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(8) In determining, for the purposes of subsection (6)(b), whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(9) Any person who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand shillings or to both.

[Act No. 8 of 2009, s. 55.]

16A. Imposition of charges and payment of interest

(1) No institution shall impose any form of charges on a savings, seven day call or fixed deposits account.

(2) An institution shall, in respect of a savings account, pay interest accruing or a return in the case of an institution carrying out business in accordance with Islamic law to that account as long as the minimum balance is maintained.

(3) An institution shall, in respect of a seven day call or fixed deposit account, pay interest accruing to the account on agreed contractual terms:

Provided that such interest may be forfeited where the deposit is uplifted before the maturity date.

[Act No. 9 of 2006, s. 12, Act No. 8 of 2008, s. 67.]

PART IV – RESERVES AND DIVIDENDS

17. Ratio between core capital and deposits

The core capital of an institution shall at all times be not less than eight percent of its total deposit liabilities.

[Act No. 4 of 1999, s. 82.]

18. Ratio between capital and assets

The Central Bank may prescribe the minimum ratios which shall be maintained by institutions as between their core capital and total capital on the one hand and their assets (including their total loans and advances) and off balance sheet items on the other and, for that purpose, may also determine the method of classifying and evaluating assets.

[Act No. 4 of 1999, s. 83.]

19. Minimum liquid assets

(1) An institution shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine.

(2) For the purpose of this section, “**liquid assets**” means all or any of the following—

- (a) notes and coins which are legal tender in Kenya;
- (b) balances held at the Central Bank;
- (c) balances at other banks in Kenya after deducting therefrom balances owed to those other banks;
- (d) balances at banks abroad withdrawable on demand or short notice and money at call abroad after deducting therefrom balances owed to banks abroad where the balances and money at call and short notice are denominated in convertible currencies; and for the purposes of this paragraph “**bank abroad**” means a bank outside Kenya or an office outside Kenya of any bank;
- (e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and rediscountable at the Central Bank;
- (f) such other assets as the Central Bank may specify.

(3) Any institution which fails to comply, within such time as the Central Bank may prescribe, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Central Bank, a penalty interest charge not exceeding one per cent of the amount of the deficiency for every day on which the offence continues.

20. Restrictions on dividends

(1) No institution incorporated in Kenya shall pay any dividend on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure (including preliminary expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off and provision has been made for loans, advances and other assets in accordance with subsection (2).

(2) Every institution shall—

- (a) make provision for loans, advances and other assets before any profit or loss is declared; and
- (b) ensure that the provision for loans, advances and other assets made under paragraph (a) is adequate according to such guidelines as may be prescribed by the Central Bank.

[Act No. 8 of 2009, s. 56.]

PART V – ACCOUNTS AND AUDIT

20A. Financial Year

(1) The financial year of every institution shall be the period of twelve months ending on the 31st December in each year.

(2) Where the financial year of an institution is different from that prescribed in this section, the institution shall, within twelve months of the commencement of this section, change its financial year to comply with the provisions of this section.

[Act No. 13 of 1994, s. 8.]

21. Form of accounts

(1) All entries in any books and all accounts kept by an institution shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

(2) The Central Bank may, at any time, issue directions to an institution requiring it to maintain such books, records or information, in addition to any books, records or information then already maintained by it, as the Central Bank may consider to be necessary.

22. Accounts to be exhibited

Every institution shall exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited balance sheet and last audited profit and loss statements (which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Central Bank and shall include a copy of the auditor's report) together with the full and correct names of all persons who are officers of the institution in Kenya, and shall, within three months of the end of each financial year, cause a copy of the balance sheet and last audited profit and loss statements for that financial year to be published in a national newspaper.

[Act No. 13 of 1994, s. 9, Act No. 8 of 1997, s. 58.]

23. Submission of accounts to the Central Bank

(1) An institution shall, not later than three months after the end of its financial year, submit to the Central Bank an audited balance sheet, showing its assets and liabilities in Kenya, and an audited profit and loss account covering its activities in Kenya together with a copy of the auditor's report, in the prescribed form.

(2) An institution which is incorporated outside Kenya, and an institution which is incorporated in Kenya and maintains subsidiaries or branches outside Kenya, shall submit to the Central Bank, with the balance sheet and accounts referred to in subsection (1), an audited balance sheet and an audited profit and loss account of the institution as a whole.

[Act No. 13 of 1994, s. 10, Act No. 8 of 2008, s. 68.]

24. Appointment of auditors

(1) Subject to subsection (7), every institution shall appoint annually an auditor qualified under section 161 of the Companies Act (Cap. 486) and approved by the Central Bank, whose duty it shall be to audit and make a report

upon the annual balance sheet and profit and loss account which are to be submitted to the Central Bank under section 23(1).

(2) If an institution fails to appoint an approved auditor under subsection (1), or to fill any vacancy for an auditor which may arise, the Central Bank may appoint an auditor and fix the remuneration to be paid by the institution to him.

(3) The Central Bank may require an auditor to undertake the following duties in addition to those provided under subsection (1)—

- (a) to submit such additional information in relation to his audit as the Central Bank may consider necessary;
- (b) to carry out any other special investigation; and
- (c) to submit a report on any of the matters referred to in paragraphs (a) and (b),

and the institution concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

(4) If the auditor of an institution, in the course of the performance of his duties under this Act, is satisfied that—

- (a) there has been a serious breach of or non-compliance with the provisions of this Act, the Central Bank of Kenya Act or the regulations, guidelines or other matters prescribed by the Central Bank (Cap. 491);
- (b) a criminal offence involving fraud or other dishonesty has been committed by the institution or any of its officers or employees;
- (c) losses have been incurred which reduce the core capital of the institution by fifty percent or more;
- (d) serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
- (e) he is unable to confirm that the claims of depositors and creditors of the institution are capable of being met out of the assets of the institution,

he shall immediately report the matter to the Central Bank.

(5) The Central Bank may arrange trilateral meetings with an institution and its auditor from time to time, to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of the institution including relevant aspects of the institution's business, its accounting and control system and its annual accounts.

(6) If an auditor of an institution fails to comply with the requirements of this Act, the Central Bank may remove him from office and appoint another person in his place.

(7) A person shall not be qualified for appointment as an auditor of an institution if he is—

- (a) a director, officer or employee of that institution; or
- (b) a person who is a partner of a Director, officer or employee of that institution; or

- (c) a person who is an employer or employee of a director, officer or employee of that institution; or
- (d) a person who is a director, officer or employee of an associate of that institution; or
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or book-keeper for that institution; or
- (f) a firm or member of a firm of auditors of which any partner or employee falls within the above categories.

[Act No. 4 of 1999, s. 84.]

25. Change of auditors to be notified to the Central Bank

(1) No institution shall remove or change its auditor except with the prior written approval of the Central Bank.

(2) An auditor of an institution shall forthwith give written notice to the Central Bank if he—

- (a) resigns from office;
- (b) does not seek to be re-appointed; or
- (c) includes in his report or draft report on the institution's accounts any qualification which did not appear in the accounts for the preceding financial year.

(3) An institution aggrieved by a decision of the Central Bank under subsection (1) may appeal to the Minister within 14 days.

(4) The decision of the Minister under subsection (3) shall be final.

[Act No. 13 of 1994, s. 11.]

26. Auditor's duty of confidence

(1) No duty to which an auditor of an institution may be subject shall be regarded as contravened by reason of his communicating in good faith to the Central Bank, whether or not in response to a request made by it, any information or opinion on a matter to which this Part applies and which is relevant to any function of the Central Bank under this Act.

(2) This section applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Part and which relates to the business or affairs of the institution or any associate of that institution.

PART VI – INFORMATION AND REPORTING REQUIREMENTS

27. Collection of information by Central Bank

The Central Bank shall collect such date and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of institutions or their duly authorised agencies and the protection of their depositors and, for this purpose, may require institutions to submit statistical and other returns on a periodic basis in addition to any other returns required by law.

[Act No. 8 of 2009, s. 57.]

28. Furnishing of information

(1) The Central Bank may require any institution and their agencies to furnish to it, at such time and in such manner as it may direct, such information as the Central Bank may reasonably require for the proper discharge of its functions under this Act.

(2) The information required to be furnished under subsection (1) may include information relating to any company which is an affiliate, an associate or a holding company of the institution required to furnish information under that subsection.

[Act No. 4 of 1999, s. 85, Act No. 8 of 2009, s. 58.]

29. Minister may require further information

The Minister may require the Central Bank or an institution to furnish to him, at such time and in such manner as he may direct, such information as the Minister may require.

30. Time to furnish information

Where the Central Bank or an institution is required to furnish information under this Part, it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in this Part or the relevant direction or within such reasonable period thereafter as may be agreed.

31. Publication of information

(1) The Central Bank or the Minister may publish in whole or in part, at such times and in such manner as it or he thinks fit, any information furnished to it or him under this Act:

Provided that the information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent in writing of that person has first been given.

(2) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for the purposes of section 49, be deemed to have contravened the provisions of this Act.

(3) Notwithstanding the provisions of this section—

- (a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority fiscal or tax agency, fraud investigations agency;
- (b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006) shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations,

prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

- (c) the Central Bank and institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006) may, in the ordinary course of business, in such manner and to such extent as the Minister may, in regulations prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

(4) Without prejudice to the generality of subsection (3)(b) or (c), regulations under that subsection may provide for the establishment and operation of credit reference bureaus, for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and disseminating it amongst such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed.

(5) No duty, to which an institution or its officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (2), to—

- (a) the Central Bank or to another institution; or
- (b) a credit reference bureau established under subsection (4),
in the course of the performance of their duties and no action shall lie against the institution or any of its officers on account of such disclosure.
- (c) a deposit-taking microfinance institution licensed under the Microfinance Act, 2006.

[Act No. 9 of 2000, s. 99, Act No. 7 of 2001, s. 4, Act No. 15 of 2003, s. 48, Act No. 10 of 2006, s. 44, Act No. 9 of 2007, s. 65, Act No. 8 of 2009, s. 59, Act No. 4 of 2012, s. 43.]

PART VII – INSPECTION AND CONTROL OF INSTITUTIONS

32. Inspection of institutions

(1) The Central Bank may, at any time and from time to time, and shall, if so directed by the Minister, cause an inspection to be made by any person authorised by it, in writing, of any institution and its agencies and of their books, accounts and records.

(2) When an inspection is made under subsection (1), the institution concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the institution and such correspondence, statements and information relating to the institution, its business and the conduct thereof as the person making the inspection may require and within seven days or such longer time as he may direct in writing; and any failure to produce any books, accounts, records, documents, correspondence, statements or information within the period

specified in the relevant direction shall constitute a contravention of the provisions of this Act for the purposes of section 49:

Provided that—

- (a) the books, accounts and other documents required to be produced shall not, in the course of the inspection, be removed from the premises of the institution or other premises at which they are produced;
- (b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report; and
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act and of the Central Bank of Kenya Act (Cap. 491).

(3) The person making the inspection shall submit his report to the Central Bank; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the institution inspected, any apparent mismanaging of the business or lack of management skills in that institution and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

[Act No. 8 of 2009, s. 60.]

32A. Vetting of officials

(1) Notwithstanding any other provisions of this Act, the Central Bank may, from time to time, where it deems it necessary to do so, carry out an assessment of the professional and moral suitability of the persons managing or controlling institutions.

(2) An assessment under subsection (1) shall be in accordance with the criteria set in the First Schedule.

(3) Where, upon an assessment under this section, the Central bank is satisfied as to the professional and moral suitability of the persons managing or controlling an institution, it shall so certify in writing to the institution.

(4) A person who, upon an assessment under this section, is not certified by the Central Bank as fit and proper to manage or control an institution, shall be deemed to be disqualified from holding office under section 48.

[Act No. 10 of 2006, s. 45.]

33. Powers of Central Bank to advise and direct

(1) If, at any time, the Central Bank has reason to believe that—

- (a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public; or

- (b) an institution, any of its officers or other person participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any of the provisions of this Act or any regulations made thereunder,

the Central Bank may—

- (i) give advice and make recommendations to the institution with regard to the conduct of its business generally;
- (ii) issue directions regarding measures to be taken to improve the management or business methods of the institution or to secure or improve compliance with the requirements of this Act, any regulations made thereunder or any other written law or regulations;
- (iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;
- (iv) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the institution generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Central Bank under this section.

(2) The Central Bank shall, before issuing a direction under subsection (1), serve upon the institution, officer or other person, a notice of such intent specifying the reasons therefor and requiring the institution, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.

(3) An institution which receives a direction under the provisions of this section shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has done so.

(4) The Central Bank may issue directions to institutions generally for the better carrying out of its functions under this Act and in particular, with respect to—

- (a) the standards to be adhered to by an institution in the conduct of its business in Kenya or in any country where a branch or subsidiary of the institution is located; and
- (b) guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

(5) A person who fails to comply with any direction under this section commits an offence and shall, in addition to the penalty prescribed under section 49, be liable to such additional penalty as may be prescribed, for each day or part thereof during which the offence continues.

[Act No. 5 of 1998, s. 58, Act No. 4 of 2012, s. 44.]

33A. Powers upon audit or inspection report

Where an auditor's report under section 24(4) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to

the provisions of this Act, or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank may—

- (a) restrict, suspend or prohibit the payment of dividends by the institution;
- (b) prohibit the conversion of any profits of the institution into capital;
- (c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;
- (d) require the institution to reconstitute its board of directors in accordance with the criteria set out in the First Schedule;
- (e) withhold branch or other corporate approval with respect to such institution;
- (f) undertake more frequent inspections of that institution;
- (g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to the capital adequacy prescribed in section 18, or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;
- (h) prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;
- (i) at the expense of the institution, appoint a person suitably qualified and competent, in the opinion of the Central Bank, to advise and assist the institution in designing and implementing a capital restoration plan or other corrective action plan under paragraph (g), and the person appointed shall regularly report to the Central Bank on the progress of the plan;
- (j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;
- (k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or
- (l) order the institution to do any or take such other actions as it may deem necessary to rectify a capital deficiency or other weaknesses.

[Act No. 5 of 1998, s. 59, Act No. 10 of 2010, s. 66.]

34. Powers of Central Bank to intervene in management

(1) This section applies, and the powers conferred by subsection (2) may be exercised, in the following circumstances—

- (a) if the institution fails to meet any financial obligation, when it falls due including an obligation to pay any depositor;
- (b) if a petition is filed, or a resolution proposed, for the winding up of the institution or if any receiver or receiver and manager or similar officer is appointed in respect of the institution or in respect of all or any part of its assets;
- (c) if the auditor of an institution makes a report to the Central Bank under the provisions of subsection (4) of section 24;

- (d) if the Central Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the institution or its depositors or other creditors;
- (e) if the institution is significantly undercapitalized; or
- (f) if the institution fails—
 - (i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed under section 33A; or
 - (ii) to add more capital, and it fails, neglects or refuses to comply, with an order or to implement a plan of correction.

(2) In any case to which this section applies, the Central Bank may—

- (a) enter into an agreement with the board of directors of an institution requiring the institution to rectify its deficiencies within three months:
Provided that in the case of reckless or fraudulent conduct, the Central Bank shall have discretion to enter an agreement based on its judgment as to the efficacy of such an approach.
- (b) appoint a competent person familiar with the business of the institution (in this Act referred to as a “Manager”) to assume the management, control and conduct of the affairs and business of an institution and to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;
- (c) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder, or to any deterioration in the financial stability of the institution, or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;
- (d) appoint a competent person familiar with the business of the institution to its board of directors to hold office as a director, who shall not be capable of being removed from office without the approval of the Central Bank;
- (e) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person;
- (f) restrict the institution from engaging in new foreign exchange business;
- (g) prohibit the institution from engaging in new off-balance sheet transactions; and
- (h) prohibit the institution from engaging any new agents or direct the institution to terminate any agency arrangement.

(3) The appointment of a manager shall be for such period, not exceeding twelve months, as the Central Bank shall specify in his instrument of appointment and may be extended by the High Court, upon the application of the Central Bank, if such extension appears to the Court to be justified.

(4) A manager shall, upon assuming the management, control and conduct of the affairs and business of an institution, discharge his duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the institution, its depositors and other creditors.

(5) The responsibility of a manager shall include—

- (a) tracing and preserving all the property and assets of the institution;
- (b) recovering all debts and other sums of money due to and owing to the institution;
- (c) evaluating the capital structure and management of the institution and recommending to the Central Bank any restructuring or reorganization which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the institution;
- (d) entering into contracts in the ordinary course of the business of the institution, including the raising of funds by borrowing on such terms as he may consider reasonable; and
- (e) obtaining from any officers or employees of the institution any documents, records, accounts, statements or information relating to its business.

(6) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the institution of its depositors and other creditors and the declaration of a moratorium shall—

- (a) be applied equally and without discrimination to all classes of creditors:

Provided that the manager may offset the deposits or other liabilities owed by the institution to any depositor or other creditor against any loans or other debts owed by that depositor or creditor to the institution;

- (b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to the minimum rate determined by the Central Bank under the provisions of section 39 of the Central Bank of Kenya Act (Cap. 491) or such other rate as may be prescribed by the Central Bank for the purposes of this section provided that the provisions of this paragraph shall not be construed so to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;
- (c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution;
- (d) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the institution, its depositors and creditors shall, save to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration under the provisions of this subsection.

(7) If any officer or employee of an institution removed under the provisions of subsection (2)(b) is aggrieved by the decision, he may apply to the High Court and the Court may confirm, reverse or modify the decision and make such other in the circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the order of removal shall remain in effect.

(8) Neither the Central Bank nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Central Bank under the provisions of this Part shall be liable in respect of any act or omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.

[Act No. 13 of 1994, s. 12, Act No. 4 of 1999, s. 86, Act No. 9 of 2006, s. 13, Act No. 10 of 2010, s. 67.]

34A. Voluntary liquidation

(1) An institution may, with the approval of the Central Bank, voluntarily liquidate itself if it is able to meet all its liabilities.

(2) An application for the Central Bank's approval for the purposes of subsection (1) shall be in the prescribed form.

(3) The Central Bank may, upon receipt of an application under subsection (2), approve the application if satisfied as to the solvency of the institution.

(4) Where the Central Bank approves an application by an institution under this section, such institution shall forthwith cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(5) Where an institution goes into liquidation under this section—

- (a) the liability of the shareholders of the institution for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process; and
- (b) the institution shall first discharge its liability to its depositors and thereafter rank all other creditors in accordance with the provisions of the Companies Act (Cap. 486).

[Act No. 4 of 1999, s. 87, Act No. 9 of 2006, s. 14.]

35. Liquidation of institutions by Central Bank

(1) If an institution becomes insolvent, the Central Bank may appoint the Board established under section 36 to be a liquidator of the institution; and the appointment shall have the same effect as the appointment of a liquidator by the Court under the provisions of Part VI of the Companies Act (Cap. 486) and references in that Act to "the relevant date" and "commencement of the winding up" shall be deemed to be references to the date on which the Board is appointed as liquidator.

(2) No liquidator of an institution shall be appointed under the provisions of the Companies Act (Cap. 486) if the Board has already been appointed as liquidator and no liquidator of an institution shall be appointed in any event without the approval of the High Court which shall not grant such approval unless the Central Bank shall certify that it does not intend to exercise its powers under this section or shall fail to exercise its powers within such period not exceeding three months as may be prescribed by the Court.

(3) In any case where a liquidator of an institution has been appointed, the Central Bank may, at any time, apply to the High Court for an order that the liquidator be removed and the Board appointed as liquidator in his place; and the provisions of the Companies Act (Cap. 486) shall, subject to the provisions of subsection (7), apply to a liquidation by the Board but only to the extent that they are not inconsistent with the provisions of this Act and any regulations made thereunder.

(4) An institution shall become insolvent for the purposes of this section if—

- (a) it is deemed to be unable to pay its debts within the meaning of section 220 of the Companies Act (Cap. 486); or
- (b) a winding-up order is made against it, or a resolution for creditors' voluntary winding-up is passed, under the Companies Act (Cap. 486); or
- (c) it is unable to pay sums due and payable to its depositors; or
- (d) the Central Bank determines that the value of its assets is less than the amount of its liabilities.

(5) Notwithstanding the provisions of any other written law, the Board shall have power to—

- (a) carry on the business of the institution so far as may be necessary for the beneficial winding-up thereof;
- (b) appoint an advocate to assist it in the performance of its duties;
- (c) pay any classes of creditors in full;
- (d) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only whereby the institution may be rendered liable;
- (e) compromise all calls and liabilities to call, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to be subsisting between an institution and a contributory or alleged contributory or other debtor or person apprehending liability to the institution and all questions in anyway relating to or affecting the assets or the winding up of the institution, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof:

Provided that any interested party aggrieved by the exercise of any of the powers specified herein may apply to the High Court for orders as appropriate.

(6) In addition to the powers conferred by section (5), when acting as a liquidator of an institution, the Board shall have the power to—

- (a) set off payment made to a protected depositor out of the fund against any dividend subsequently determined as payable to such depositor;
- (b) recover interest payable to the institution on loans, overdrafts and other credit facilities outstanding as at the date of liquidation;
- (c) offset deposits and any other liabilities to customers against any loans or debts owed to the institution as at the date of liquidation;

- (d) invest surplus funds in the liquidation account which are not immediately required for the purpose of financing day to day operations in short-term placements with reputable institutions approved by the Board or in such Government securities as the Board may determine.

(7) In the exercise of its powers as a liquidator, the Board may, by notice in writing, require a person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution or any person who has custody of any funds or other assets of the institution being liquidated to—

- (a) give to the liquidator all reasonable assistance in connection with the liquidation;
- (b) appear before the liquidator for examination concerning matters relevant to the liquidation;
- (c) produce any books or documents that relate to the affairs of the institution being liquidated.

(8) A person who—

- (a) refuses or fails to comply with a requirement of the liquidator which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders a liquidator in the exercise of the powers conferred under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before a liquidator for examination pursuant to such requirement, makes a statement which he knows to be false or misleading in any material particular,

shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both.

(9) Where an offence under subsection (8) is a continuing offence, the person shall, in addition to the penalty prescribed under that subsection be liable to a penalty of ten thousand shillings for each day or part thereof during which the offence continues.

(10) In exercising its functions under the provisions of this section, the Board shall be subject to the supervision of the High Court which may, upon the application of any interested party and if it deems fit, appoint a committee of inspection which shall have the same powers as a committee of inspection appointed under the provisions of Part VI of the Companies Act.

(11) The Minister may make regulations generally for carrying out the purposes and provisions of this section; and the regulations may be applied in conjunction with or to the exclusion of, any similar or equivalent provisions of the Companies Act and the regulations made thereunder and may include provision as to the manner and time in which depositors and other creditors of the institution, preferential or otherwise, shall submit proof of debt to the Board.

(12) Notwithstanding anything to the contrary contained in any law, no receiver or receiver and manager shall be appointed to an institution without the prior approval of the High Court which shall not grant such approval unless the Central Bank shall certify that it does not intend to exercise its powers under this section or shall fail to exercise its powers within such period not exceeding three months as may be prescribed by the Court.

(13) Where a receiver or receiver and manager of an institution has been appointed and a manager or liquidator is appointed under the provisions of this Part, the powers of the receiver or receiver and manager may only be exercised if and to the extent authorised by the Central Bank or the High Court.

[Act No. 5 of 1998, s. 60, Act No. 15 of 2003, s. 49.]

35A. Expenses under this Part

(1) Any expenses incurred by reason of the exercise of any of the powers conferred by this Part in respect of an institution shall be met by that institution:

Provided that the Board may, where it is appointed as a liquidator under this Act, in the event of assets being insufficient to satisfy liabilities, authorise payment out of the assets, of the Fund costs, charges and expenses incurred in the winding up, in such order or priority as it may consider appropriate.

(2) Upon completion of the winding up of an institution, the liquidator may receive payment from debtors and other entities, on behalf of the wound up institution and the amount received shall be paid into the Fund.

(3) Notwithstanding anything to the contrary in any other written law, the Board or an institution under liquidation shall not be required to provide security for costs in any suit or other legal proceedings initiated or defended by such liquidators or institutions.

[Act No. 13 of 1994, s. 13, Act No. 15 of 2003, s. 50, Act No. 10 of 2010, s. 68.]

PART VIII – THE DEPOSIT PROTECTION FUND

36. Deposit Protection Fund Board

(1) There is hereby established a body corporate to be known as the Deposit Protection Fund Board.

(2) The Board shall have perpetual succession and a common seal and shall in its corporate name or in the name of an institution be capable of—

- (a) suing and being sued, without sanction of the court or a Committee of Inspection;
- (b) taking, purchasing or otherwise acquiring, holding, charging, leasing or disposing of movable or immovable property;
- (c) borrowing money;
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate or a liquidator.

(3) The Board shall—

- (a) hold, manage and apply in accordance with the provisions of this Part, the Deposit Protection Fund (hereinafter referred to as “the Fund”); and

(b) levy contributions for the Fund, in accordance with the following provisions of this part, from institutions; and have such other functions as are conferred on the Board by these provisions.

(4) The Board shall consist of—

- (a) the Governor of the Central Bank who shall be the chairman;
- (b) the Permanent Secretary to the Treasury; and
- (c) five members appointed by the Minister in consultation with the Central Bank to represent the interests of institutions.

(5) Subject to this Part, the Board shall determine its own procedure.

(6) The Central Bank shall make available to the Board such facilities and the services of such officers as are necessary for the proper and efficient exercise of the functions of the Board.

(7) The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and of one other member of the Board authorised by the Board in that behalf and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and one member as aforesaid:

Provided that the Board shall, in the absence of the chairman or the authorised member in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or such other member.

(8) The Board may, by a power of attorney, appoint the chief executive officer of the Board to execute or authenticate by a seal on behalf of any institution under liquidation, any documents on behalf of the institution.

[Act No. 13 of 1994, s. 14, Act No. 7 of 2001, s. 5, Act No. 9 of 2006, s. 15.]

36A. Objects and functions of the Board

(1) The principal object of the Board shall be to provide a deposit insurance scheme for customers of member institutions and liquidate and wind up the operations of any institution in respect of which the Board is appointed as a liquidator in accordance with this Act or any other written law.

(1A) Where, under the provisions of any other written law, the Board is—

- (a) required to provide a deposit scheme for customers of any institution; or
- (b) appointed as a liquidator in respect of any insolvent institution,

the institution shall, subject to the provisions of any other written law, be deemed to be an institution for the purposes of this Part and the relevant provisions of this Part shall, with the necessary modifications, apply to that institution.

(2) Without prejudice to the generality of the foregoing, the Board shall—

- (a) hold, manage and apply in accordance with the provisions of this Part, the Deposit Protection Fund (hereinafter referred to as “the Fund”);
- (b) levy contributions for the Fund from institutions in accordance with this Part or the provisions of any other written law;

- (c) perform such other functions as are conferred on it by the Board, this Act or any other written law.

[Act No. 7 of 2001, s. 6, Act No. 19 of 2006, s. 50.]

36B. Remuneration of Board members

The Board shall pay its members such remuneration, fees or allowances for expenses as it may determine after consultation with the Minister.

[Act No. 7 of 2001, s. 6.]

36C. Protection from personal liability

(1) Subject to subsection (2), no matter or thing done by a member of the Board or by any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

[Act No. 7 of 2001, s. 6.]

37. Deposit Protection Fund

(1) The Minister may, from time to time in consultation with the Central Bank and by notice in the *Gazette*, fix the size of the Fund sufficient to protect the interests of depositors to be made up by contributions under section 38 or under the provisions of any other written law and may authorize the Board to borrow from the Central Bank or any other person such amount as it may require for the purposes of discharging its functions under this Part.

(2) The Fund shall consist of—

- (a) moneys in the Deposit Protection Fund established by section 17 of the Banking (Amendment) Act, 1985 (No. 17 of 1985);
- (b) moneys contributed to the Fund by institutions under section 38 or under the provisions of any other written law;
- (c) income credited to the Fund under subsection (3);
- (d) moneys borrowed for the purposes of the Fund under subsection (1); and
- (e) money received as subventions, grants or donations to the Fund.

(3) The moneys constituting the Fund shall be placed in an account with the Central Bank to be invested by the Board in treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund.

(4) There shall be chargeable to the Fund the administration expenses of the Board, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

[Act No. 20 of 1989, Sch., Act No. 19 of 2006, s. 51.]

38. Contribution to the Fund

(1) Every institution which is licensed to carry on business in Kenya shall be a contributor to the Fund and shall pay into the Fund such annual amount, and at such times, as the Board may determine.

(2) The Board shall serve on every institution a notice specifying the amount and the period, which shall not be later than twenty-one days after the date of service of the notice, within which the amount shall be paid into the Fund by the institution.

(3) The amount of a contribution to the Fund under this section shall not be less than one hundred thousand shillings nor exceed 0.4 percent of the average of the institution's total deposit liabilities during the period of twelve months prior to the date of the notice served under subsection (2); but the Minister may, after consultation with the Board, by order, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(4) An institution which, for any reason, fails to pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one-half percent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(5) If it appears to the Board that the affairs of an institution are being conducted in a manner detrimental to its own interests or to the interests of its depositors, the Board may increase the contributions of that institution beyond the maximum set out in subsection (4) or terminate the protection of the deposits of such institution.

(6) The Board shall, as soon as reasonably practicable after terminating the protection of the deposits of an institution under subsection (5), cause the name of that institution to be published in the *Gazette*.

(7) The Board shall cause a list of all institutions whose deposits are protected to be published in the *Gazette* annually.

[Act No. 13 of 1994, s. 15.]

39. Protection of deposits

(1) The amount being the aggregate credit balance of any accounts maintained by the customer to an institution, less any liability of the customer to the institution, shall be a protected deposit to the extent determined by the Minister from time to time by order published in the *Gazette*.

(2) A customer of an institution may upon the institution becoming insolvent, lodge a claim with the Board, in such form as the Board may approve, for payment to him out of the Fund of any protected deposit which he would, but for the insolvency, have been paid had he demanded payment from the insolvent institution.

(3) The Board may, before paying any claim lodged under subsection (2), require the claimant to furnish it with such documentary proof as may be proper to show that he is entitled to payment out of the Fund; and the Board may decline to make any payment under this section to a person who, in the opinion of the Board, had any responsibility for, or may have profited directly or indirectly from the circumstances leading up to the institution becoming insolvent.

(4) The Board may, at any time and from time to time, require the Central Bank to have an inspection carried out under section 32 to ascertain the type, number and value of the protected deposits of any institution and the information obtained pursuant to the inspection shall, subject to section 31, be made available by the Central Bank to the Board.

(5) Upon payment of a protected deposit, the Board shall be entitled to receive from the institution or its liquidator, as the case may be, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor:

Provided that the Board shall be entitled to payment of its subrogated claims prior to further payment of any other depositor or creditor of the institution.

(6) An institution shall become insolvent for the purposes of this Part if—

- (a) a liquidator or interim liquidator is appointed under the provisions of the Companies Act (Cap. 486) or this Act; or
- (b) a winding-up order is made against it, or a resolution for creditors' voluntary winding up is passed, under the Companies Act.

(7) For the purposes of this section “**customer**” includes persons entitled to a deposit as trustees or persons holding any deposit jointly.

[Act No. 7 of 2001, s. 7.]

39A. Limitation of claims

Notwithstanding the provisions on any other written law for the time being in force—

- (a) a claim for payment of a protected deposit by a creditor of an institution shall not be brought after the expiry of two years from the date of publication of commencement of such payment by the Board;
- (b) a claim for payment of a dividend by a creditor of an institution shall not be brought after the expiry of one year from the date of publication of commencement of such payment by the Board:

Provided that this paragraph shall not apply to a person who has, for reasons beyond his control and to the satisfaction of the Board, been unable to make his claim within the said period.

[Act No. 7 of 2001, s. 8.]

40. Rights of the Board on insolvency

Whenever an institution becomes insolvent, the Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved, and a duly authorized representative of the Board shall be entitled to attend any meeting of creditors of the institution and to be a member of any committee of inspection appointed under the Companies Act (Cap. 486) or this Act and in the case of a winding-up by the High Court, the Board shall be entitled to appear at the hearing of the petition and to make representations.

[Act No. 20 of 1989, Sch.]

40A. Rights of assignment

(1) The liquidator may assign the assets or liabilities of an institution or of a customer under this Act, the Companies Act (Cap. 486) or under any other written law to third parties for the benefit of the creditors and depositors of the institution under liquidation.

(2) The right of assignment conferred by this section shall override all other rights and interests of parties under contracts of employment, leases, charges, mortgages or any other agreements the institution may have entered into before going into liquidation.

(3) Every public officer having the power or duty to accept and register or amend any entry in any register relating to an assignment of an asset or liability pursuant to subsection (1) shall, upon request made by the liquidator, customer or other person, do all such things as are by law necessary to complete the registration of the assignment.

[Act No. 5 of 1998, s. 61.]

41. *Repealed by Act No. 13 of 1994, s. 16.*

41A. Administration of assets

(1) The Board shall hold, manage and dispose of all the assets of an institution remaining unsold at the time of winding up.

(2) The Registrar of Companies and the Registrar of Titles, and any officer or person in charge of a deeds registry, or any other relevant office, shall upon production of any relevant deed, bond, share, stock, debenture or other document, make such endorsement and effect such alterations as may be necessary to record the transfer of the relevant property or asset, as the case may be.

[Act No. 10 of 2010, s. 69.]

42. Annual reports, etc.

(1) The Board shall, within three months after the close of each financial year, submit to the Minister a report on the Board's operations throughout the year.

(2) The financial year of the Board shall be the same as the Central Bank's financial year.

PART IX – REPRESENTATIVE OFFICES OF FOREIGN INSTITUTIONS**43. Representative offices of foreign institutions**

(1) The Central Bank may, in writing and subject to such conditions as the Central Bank may consider necessary, authorize a bank or a financial institution incorporated outside Kenya which does not propose to transact banking or financial business in Kenya but which proposes and applies in writing to the Central Bank to establish a representative office in Kenya, to open an office in a place in Kenya approved by the Central Bank.

(2) The Central Bank may require a representative office to furnish such information as the Central Bank may require at such time and in such manner as the Central Bank may direct.

(3) Where a representative office is required to furnish information under subsection (2), it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in the direction or within such reasonable period thereafter as may be agreed.

(4) The Central Bank may at any time, if it appears to the Central Bank that a representative office is engaged in banking or financial business or that the affairs of a representative office are being conducted contrary to any condition of an authority granted under subsection (1) or in a manner detrimental to banking or financial business in Kenya, issue directions to the representative office to take such corrective action as the Central Bank considers to be necessary within such period as may be specified in the directions; and, if the representative office fails to comply with such directions, the Central Bank may order that the affairs of a representative office in Kenya be wound up and the office closed within such time as the Central Bank may direct.

[Act No. 9 of 2006, s. 16.]

PART X – MISCELLANEOUS PROVISIONS

44. Restrictions on increase in bank charges

No institution shall increase its rate of banking or other charges except with the prior approval of the Minister.

44A. Limit on interest recovered on defaulted loans

(1) An institution shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under subsection (2).

(2) The maximum amount referred to in subsection (1) is the sum of the following—

- (a) the principal owing when the loan becomes non-performing;
- (b) interest, in accordance with the contract between the debtor and the institution, not exceeding the principal owing when the loan becomes non-performing; and
- (c) expenses incurred in the recovery of any amounts owed by the debtor.

(3) If a loan becomes non-performing and then the debtor resumes payments on the loan and then the loan becomes non-performing again, the limitation under paragraphs (a) and (b) of subsection (1) shall be determined with respect to the time the loan last became non-performing.

(4) This section shall not apply to limit any interest under a court order accruing after the order is made.

(5) In this section—

- (a) “**debtor**” includes a person who becomes indebted to an institution because of a guarantee made with respect to the repayment of an amount owed by another person;
- (b) “**loan**” includes any advance, credit facility, financial guarantee or any other liability incurred on behalf of any person; and

- (c) a loan becomes non-performing in such manner as may, from time to time, be stipulated in guidelines prescribed by the Central Bank.

(6) This section shall apply with respect to loans made before this section comes into operation, including loans that have become non-performing before this section comes into operation:

Provided that where loans become non-performing before this section comes into operation, the maximum amount referred to in subsection (1) shall be the following—

- (a) the principal and interest owing on the day this section comes into operation; and
- (b) interest, in accordance with the contract between the debtor and the institution, accruing after the day this section comes into operation, not exceeding the principal and interest owing on the day this section comes into operation; and
- (c) expenses incurred in the recovery of any amounts owed by the debtor.

[Act No. 9 of 2006, s. 17.]

45. Minister to consult with the Central Bank

(1) The Minister shall consult with the Central Bank in the exercise of his functions under this Act.

(2) Where the approval of the Minister is required under any provision of this Act, the application for such approval shall be submitted through the Central Bank.

46. Bank holidays

(1) Where the Minister considers that it is in the public interest that banks, or a particular bank, or a particular branch of a bank, should remain closed on a day which is not a public holiday, he may by notice in the *Gazette*, declare that day to be a bank holiday for all banks, or for that particular bank, or for that particular branch, as the case may be, and every licensed bank, or that particular bank, or that particular branch, as the case may be, shall remain closed on that day.

(2) Without prejudice to subsection (1), the Central Bank may, on application by an institution or a branch of an institution, if satisfied that it is necessary to do so, authorize the institution or branch to remain closed on such day or part thereof, or on such days as may be specified in the authorization, subject to such terms and conditions as the Central Bank may impose.

[Act No. 8 of 2008, s. 69.]

47. Orders by High Court

(1) The High Court, on application made *ex parte* by the Minister or, where a manager or liquidator has been appointed by the Central Bank, may, if it considers it to be in the interests of the depositors of an institution, make an order—

- (a) prohibiting the institution from carrying on business; or

- (b) staying the commencement or continuance of any actions or proceedings against the institution in regard to any business for a specified period of time on such terms and conditions as it considers reasonable,

and may from time to time extend the specified period up to a total of six months from the beginning of the stay.

(2) So long as an order under paragraph (a) of subsection (1) remains in force, the licence granted to the institution under this Act shall be deemed to be suspended.

48. Disqualification of officers

(1) A person who is an officer of an institution shall cease to hold office and shall not thereafter be eligible to hold office in any institution if he—

- (a) becomes bankrupt or suspends payment or compounds with his creditors; or
- (b) is convicted of an offence involving dishonesty or fraud; or
- (bb) is disqualified from holding office under section 32A; or
- (c) is removed from office under the provisions of section 34.

(2) Any person who continues to act as an officer of an institution after he has been disqualified by virtue of this section shall be guilty of an offence.

[Act No. 10 of 2006, s. 46.]

49. Penalties for offences

Where any institution or other person contravenes any of the provisions of this Act—

- (a) if it is a body corporate, it shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings; and
- (b) every officer of that institution or person shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or to both unless he proves that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or that he took all reasonable steps to prevent it taking place.

50. Penalties for default by officers

(1) Any officer of an institution who—

- (a) fails to take all reasonable steps to secure the compliance of the institution with this Act; or
- (b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act or any other written law applicable to banks or financial institutions; or
- (c) fails to supply any information required under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both.

(2) It shall be a defence to a charge under subsection (1) for an officer to show that he reasonably thought that another competent person had been charged with the responsibility or duty in respect of which the default arose.

51. Misleading advertisement for deposits

(1) Any institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which—

- (a) falsely represents that he is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or
- (b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

shall be guilty of an offence.

(2) The Central Bank may, at any time direct any person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits which, in its sole discretion, it considers to be misleading.

52. Civil obligations

(1) For the avoidance of doubt, no contravention of the provisions of this Act or the Central Bank of Kenya Act (Cap. 491) shall affect or invalidate in any way any contractual obligation between an institution and any other person.

(2) The provisions of subsection (1) shall apply with retrospective effect to the Banking Act (now repealed) and the Central Bank of Kenya Act (Cap 488).

(3) This section shall not permit any institution to recover in any court of law interest and other charges which exceed the maximum permitted under the provisions of this Act or the Central Bank of Kenya Act.

52A. Act to prevail in event of conflict

(1) Subject to subsection (2), where there is a conflict between the provisions of this Act and the provisions of any other written law applicable to an institution licensed under this Act, the provisions of this Act shall prevail.

(2) For the purposes of subsection (1), the expression “written law” does not include the Central Bank of Kenya Act, the Income Tax Act (Cap. 491), the East African Community Customs Management Act (Cap. 470), the Value Added Tax Act (Cap. 472) or any of the other laws set out in the First Schedule to the Kenya Revenue Authority Act (Cap. 476).

[Act No. 13 of 1994, s. 17, Act No. 4 of 1999, s. 88, Act No. 9 of 2007, s. 66.]

53. Exemptions

(1) The Minister may, by notice in the *Gazette*, exempt an institution from the provisions of section 12, 13 or 14 subject to such conditions as the Minister considers necessary.

(2) An exemption granted under subsection (1) shall remain in force for such period specified in the notice as the Minister shall deem fit.

[Act No. 4 of 1993, s. 64, Act No. 10 of 2006, s. 47.]

54. Act not to apply to certain institutions

(1) This Act does not apply to—

- (a) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act (Cap. 493B);

- (b) the Agricultural Finance Corporation established under the Agricultural Finance Corporation Act (Cap. 323);
- (c) a society registered as a co-operative society under the Co-operative Societies Act, Limited (Cap. 490).

(2) Notwithstanding the provisions of subsection (1), where any of the bodies referred to in that subsection is contracted by an institution as an agent to provide banking services on behalf of the institution, this Act shall apply to such body to the extent of the services contracted.

[Act No. 8 of 2009, s. 61, Act No. 10 of 2010, s. 70.]

55. Regulations

(1) The Minister may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may, in regulations, prescribe penalties to be paid by institutions or credit reference bureaus which fail or refuse to comply with any directions of the Central Bank under this Act, which shall not exceed one million shillings in the case of an institution, or credit reference bureau, or one hundred thousand shillings in the case of a natural person, and may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

[Act No. 5 of 1998, s. 62, Act No. 8 of 2008, s. 70.]

56. Repeal and savings

(1) The Banking Act (Cap. 488) is repealed.

(2) Notwithstanding subsection (1), whereupon the commencement of this Act any bank or financial institution is licensed to transact banking business or the business of a financial institution in Kenya, that licence shall have effect as if granted under section 5 of this Act.

57. Amendments of other laws

The several written laws specified in the first column of the Second Schedule are amended, in relation to the provisions thereof specified in the second column, in the manner specified in the third column.

FIRST SCHEDULE

[Section 4, 32A.]

[Act No. 8 of 1991, s. 82, L.N. 443/1992, Act No. 13 of 1994, s. 18, Act No. 9 of 2006, s. 18, Act No. 10 of 2006, s. 48, Act No. 8 of 2008, s. 71.]

PART A – CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY

- (a) In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior

officers of an institution under section 4, or managing or controlling institutions under section 32A, the Central Bank shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- (i) his possession of adequate professional credentials or experience or both for the position for which he is proposed;
 - (ii) his ability to recommend sound practices gleaned from other situations;
 - (iii) his ability provide dispassionate advise;
 - (iv) his ability to avoid conflicts of interest in his activities and commitments with other organizations;
 - (v) his ability to absent himself from decisions when he is incapable of providing objective advice.
- (b) For the purpose of and without prejudice to the generality of the provisions of paragraph (a), the Central Bank, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—
- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
 - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of or malpractices by persons engaged in the provision of banking, insurance, investment or other financial services;
 - (iii) was a Director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management under Part VII of this Act;
 - (iv) has taken part in any business practices that, in the opinion of the Central Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
 - (v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment;
 - (vi) has defaulted in the repayment of any advance or loan made to him by any institution licensed under the Act or a society licensed under the Building Societies Act (Cap. 489) for three consecutive months.
- (c) The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

[Act No. 9 of 2006, s. 18, Act No. 10 of 2006, s. 48, Act No. 8 of 2008, s. 71.]

PART B – CRITERIA FOR DETERMINING MORAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS PROPOSED TO MANAGE OR CONTROL INSTITUTIONS

- (a) In order to determine, for the purposes of this Act, the moral suitability of significant shareholders of an institution, the Central

Bank shall have regard to the previous conduct and activities of the significant shareholder concerned in business or financial matters and, in particular, to any evidence that such person—

- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
 - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty of or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services.
- (b) For the purposes of determining the moral suitability of a corporate entity, its Directors and senior officers shall satisfy the criterion prescribed in paragraph (a) of Part B of this Schedule.
 - (c) The Central Bank, may request any person or corporate entity to furnish such information as may be necessary in determining the moral suitability of the person stipulated in the Act.

SECOND SCHEDULE

[Section 7.]

[Act No. 13 of 1994, s. 19, Act No. 8 of 1997, s. 59, Act No. 5 of 1998, s. 63, Act No. 4 of 1999, s. 89, Act No. 15 of 2003, s. 51, Act No. 8 of 2008, s. 72.]

MINIMUM CAPITAL REQUIREMENTS

Every institution shall, at all times, maintain—

- (a) a core capital of not less than eight percent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;
- (b) a core capital of not less than eight percent of its total deposit liabilities;
- (c) a total capital of not less than twelve percent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by Central Bank;
- (d) a core capital of at least two hundred and fifty million Kenya shillings in the case of a bank or a mortgage finance company;

Provided that the provisions of this paragraph shall apply in accordance with the following table.

- (e) a core capital of at least two hundred million Kenya shillings in the case of a financial institution.

<i>Compliance date</i>	<i>Minimum Core Capital</i>	
	<i>Banks and Mortgage Finance Companies (KShs. Millions)</i>	<i>Financial Institutions (KShs. Millions)</i>
31st December, 1999	200	150.00
31st December, 2000	250	187.50
31st December, 2001	300	225.00
31st December, 2002	350	262.50

SECOND SCHEDULE—*continued*

<i>Compliance date</i>	<i>Banks and Mortgage Finance Companies (KShs. Millions)</i>	<i>Financial Institutions (KShs. Millions)</i>
31st December, 2003	400	300.00
31st December, 2004	450	337.50
31st December, 2005	500	375.00

AMENDMENTS OF OTHER WRITTEN LAWS

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Bills of Exchange Act (Cap. 27)	s. 93(2)	In paragraph (a)(iii), delete “section 25” and substitute “section 46”.
The Income Tax Act (Cap. 470)	s. 2(1)	In the definition of “banker” insert “or mortgage finance company” immediately after “financial institution”.
	Fourth Schedule	Delete “A bank or financial institution licensed under the Banking Act” and insert “A bank or financial institution or mortgage finance company licensed under the Banking Act”.
The Investment Promotion Centre Act (Cap. 485)	s. 4(c)	Insert “or mortgage finance company” immediately after “financial institutions”.
The Companies Act (Cap. 486)	s. 386(5)	Insert “or financial institution or mortgage finance company” immediately after “bank”.
The Co-operative Societies Act (Cap. 490)	s. 43(d)	Delete the word “registered” and insert “licensed”.
The Central Bank of Kenya Act (Cap. 491)	s. 2	Delete the word “licensed” appearing in the definition of “specified bank”. Delete the definition of “specified financial institutions” and insert the following—

*Banking*SECOND SCHEDULE—*continued*

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
		“specified financial institution” means a financial institution or mortgage finance company within the meaning of the Banking Act which is specified by the Bank for the purposes of this Act.
The Insurance Act (No. 1 of 1985)	s. 2G	Delete the definition of “financial institution” and insert— “financial institution has the meaning assigned to it in the Baking Act and includes a mortgage finance company within the meaning of that Act.

CHAPTER 488

BANKING ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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BANKING (LICENCES) (FORMS AND FEES) REGULATIONS, 1969

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Applications for licences.
3. Form of licence.
4. Fees for licences.
5. Other fees.

SCHEDULES

- FIRST SCHEDULE – FORM A - FORMS A AND B
SECOND SCHEDULE – FORM C - FORMS C AND D
THIRD SCHEDULE – FORMS E AND F
FOURTH SCHEDULE – FEES
-

[Subsidiary]

BANKING (LICENCES) (FORMS AND FEES) REGULATIONS, 1969

[Section 32 (now repealed), L.N. 116/1969, L.N. 57/2011.]

1. Citation

These Regulations may be cited as the Banking (Licences) (Forms and Fees) Regulations, 1969.

2. Applications for licences

An application for the grant of a licence by a bank or financial institution shall be submitted in duplicate in the appropriate form set out in the First Schedule and shall be accompanied by such statements as the bank or financial institution considers necessary in support of its application.

3. Form of licence

A licence granted to a bank or financial institution shall be in the appropriate form set out in the Second Schedule.

4. Fees for licences

The licence fee shall be sent to the Central Bank of Kenya accompanied by a licence fee payment voucher in duplicate in the appropriate form set out in the Third Schedule.

[L.N. 57/2011, s. 2.]

5. Other fees

The fees specified in the Fourth Schedule shall be payable for the various matters set out therein.

FIRST SCHEDULE

[Rule 2.]

FORM A

APPLICATION FOR A LICENCE TO CONDUCT BANKING BUSINESS

..... (name of bank)

of (address)

hereby applies for a licence to carry on a banking business.

Particulars

1. Country of incorporation

2. Situation of registered office

3. Situation of principal office in Kenya

4. List of places of business in Kenya—

.....

.....

.....

FIRST SCHEDULE—continued

- 5. Details of capital—
 - (a) nominal value
 - (b) paid-up value
- 6. The number of years that the bank has been established and has conducted or carried on banking business—
 - (a) in country of incorporation
 - (b) in Kenya
 - (c) in other countries
 -
 -
- 7. Names and addresses of directors
 -
 -
 -
- 8. Name and address of General Manager or Superintendent for Kenya
 -
 -

Date

.....
(Signature of a director of the bank or the
general manager or superintendent for Kenya)

Note.—This application must be accompanied by balance sheets and profit and loss accounts for each of the five years preceding the date of this application.

FORM B

APPLICATION FOR A LICENCE TO CONDUCT BUSINESS OF A FINANCIAL INSTITUTION

..... (name of financial institution)
of (address)
hereby applies for a licence to carry on a business of a financial institution.

Particulars

- 1. Country of incorporation
- 2. Situation of registered office
- 3. Situation of principal office in Kenya
- 4. List of places of business in Kenya—
 -
 -
 -
- 5. Details of capital—
 - (a) nominal value
 - (b) paid-up value

Banking

[Subsidiary]

FIRST SCHEDULE, FORM B—continued

6. The number of years that the financial institution has been established and has conducted or carried on business of a financial institution—

- (a) in country of incorporation
- (b) in Kenya
- (c) in other countries

7. Names and addresses of directors

.....

.....

.....

8. Name and address of General Manager or Superintendent for Kenya

.....

.....

.....

Date

.....
 (Signature of a director of the financial institution
 or the general manager or superintendent for
 Kenya)

Note.—This application must be accompanied by balance sheets and profit and loss accounts for each of the five years preceding the date of this application.

SECOND SCHEDULE

[Rule 3, L.N. 57/2011, s. 3.]

FORM C

LICENCE TO CONDUCT A BANKING BUSINESS

THIS LICENCE is granted to—

..... (name of bank)
 of (address)

and authorizes the said bank to conduct or carry on banking business in Kenya.

This licence is issued subject to the provisions of the Banking Act and to the conditions endorsed hereon.

CONDITIONS

Dated this day of

LICENCE NO.

.....
 Central Bank of Kenya

SECOND SCHEDULE—continued

FORM D

[L.N. 57/2011, s. 3.]

LICENCE TO CONDUCT THE BUSINESS OF A FINANCIAL INSTITUTION

THIS LICENCE is granted to—

..... (name of financial institution)
of (address)
and authorizes the said financial institution to conduct or carry on business of a financial institution in Kenya.

This licence is issued subject to the provisions of the Banking Act and to the conditions endorsed hereon.

CONDITIONS

Dated this day of

LICENCE NO.

Central Bank of Kenya

THIRD SCHEDULE

[Rule 4.]

FORM E

[L.N. 57/2011, s. 4.]

LICENCE FEE PAYMENT VOUCHER (BANK)

..... (name of bank)
of (address)
hereby encloses the fee of for
*the grant of a licence

the annual renewal of
Licence No.

Dated

(Signed)

FOR OFFICIAL USE

Receipt

Received the fee of in respect
of Licence No. for the twelve month
period until

Dated

Central Bank of Kenya

Note.—This form must be forwarded to the Central Bank of Kenya in duplicate.

* Delete whichever is inapplicable.

Banking

[Subsidiary]

THIRD SCHEDULE—*continued*

FORM F

[L.N. 57/2011, s. 4.]

LICENCE FEE PAYMENT VOUCHER (FINANCIAL INSTITUTION)

..... (name of financial institution)
of (address)
hereby encloses the fee of for
*the grant of a licence

the annual renewal of
Licence No.

Dated

.....
(Signed)

For Official Use
Receipt

Received the fee of in respect
of Licence No. for the twelve month
period until

Dated

.....
Central Bank of Kenya

Note.—This form must be forwarded to the Central Bank of Kenya in duplicate.

* *Delete whichever is inapplicable.*

FOURTH SCHEDULE

[Rule 5.]

FEES

<i>Matter for which fee payable</i>	<i>Sh.</i>	<i>cts.</i>
For inspecting statements or other documents	10	00
For copies or extracts from statements or other documents, other than licences—		
(i) if certified, per folio of 100 words or part thereof	10	00
(ii) if not certified, per folio of 100 words or part thereof	5	00
For copies of licences—		
(i) if certified	10	00
(ii) if not certified	5	00

BANKING (LIQUIDATION OF INSTITUTIONS) REGULATIONS, 1992

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Notice of appointment and security.
 3. Meeting of creditors.
 4. Power to waive proof of debt.
 5. Power of High Court to decide all claims.
 6. Transfer of pending proceeding.
 7. Public examination of officers and others.
 8. Special provisions affecting examinations.
 9. Special provisions for assessing damages.
 10. Resignation of Board.
-

[Subsidiary]

BANKING (LIQUIDATION OF INSTITUTIONS) REGULATIONS, 1992

[L.N. 402/1992.]

1. Citation

These Regulations may be cited as the Banking (Liquidation of Institutions) Regulations, 1992.

2. Notice of appointment and security

(1) Where the Board is appointed as a liquidator of an institution it shall, as soon as practicable thereafter, cause notice of its appointment to be published in the *Gazette* and at least one daily newspaper of general circulation in Kenya.

(2) The Board shall not be required to give any security by reason of its appointment as liquidator and upon appointment shall be deemed to have given security for the purposes of the Companies (Winding-up) Rules (Cap. 486, Sub. Leg.).

3. Meeting of creditors

Where the Board has been appointed as liquidator of an institution, it shall not, unless the court otherwise directs, be necessary for the liquidator to convene a meeting of creditors and contributories under the provisions of section 236 of the Companies Act (Cap. 486).

4. Power to waive proof of debt

(1) Where the Board has been appointed as liquidator of an institution, it may, if it deems fit, admit the claim of any depositor or class of depositors without submission of formal proof of debt and shall notify the depositor or depositors concerned accordingly.

(2) Any depositor who is dissatisfied with the decision of the Board may apply to the Court in the same manner as a dissatisfied creditor under the provisions of the Companies (Winding-up) Rules.

5. Power of High Court to decide all claims

The High Court shall, except as otherwise expressly provided in regulation 6, have exclusive jurisdiction to entertain and decide any claim made by or against an institution which, is being wound-up or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of an institution.

6. Transfer of pending proceeding

(1) Where an institution is being wound-up, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under the Act or these Regulations and which is pending in any other court immediately before the commencement of the Act or the commencement of the winding-up of the institution, whichever is later, shall be proceeded with except in the manner provided under these Regulations.

(2) The liquidator shall, within three months from the commencement of the winding-up or the commencement of the Act, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under subregulation (2), the High Court may give the parties concerned an opportunity to show cause why the proceedings should not be transferred to

[Subsidiary]

the Court and it shall make such order as it deems fit transferring all or such of the pending proceedings as may be specified in the order to the Court and such proceedings shall thereafter be disposed of by the Court.

(4) If any proceeding pending in a Court is not transferred to the High Court under subregulation (3), the proceedings shall be continued in the Court in which the proceedings were pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Court of Appeal or the High Court.

7. Public examination of officers and others

(1) In the winding-up of an institution, the liquidator shall determine whether, in his opinion, any loss has been caused to the institution since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of a person in the promotion or formation of the institution or of any officer or auditor of the institution.

(2) If the liquidator determines that a loss has been caused by an act or omission referred to in subregulation (1), he may apply to the High Court for an order that any officer or auditor of an institution or any person who has taken part in the promotion or formation of the institution shall be publicly examined and the Court shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the institution or as to his conduct and dealings in so far as they relate to the affairs of the institution.

(3) The liquidator shall take part in the examination and for that purpose may employ a legal representative of his own choice.

(4) Any creditor or contributor may also take part in the examination either personally or by an advocate.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this regulation may, at his own cost, employ an advocate who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made against him, the High Court may allow such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined.

(9) References in this regulation to an officer or auditor of an institution shall include a former officer or auditor of that institution.

8. Special provisions affecting examinations

(1) This regulation shall apply to any examination under regulation 7 and also to any examination under section 263 or section 265 of the Companies Act (Cap. 486) which is conducted in the course of the winding-up of any institution whether such winding-up commenced before or after the commencement of the Act.

(2) No person shall be excused from examination by reason of the fact that any other proceedings, whether criminal or civil, are in progress or contemplated against him.

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(3) The official record of the evidence taken on any such examination may thereafter be used in evidence against any person examined in any civil proceedings and shall be open to the inspection of any creditor or contributory at all reasonable times.

9. Special provisions for assessing damages

(1) Where an application is made to the High Court under section 323 of the Companies Act (Cap. 486) against any person for repayment or restoration of any money or property of an institution and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under section 323 of the Companies Act (Cap. 486) and the High Court has reason to believe that any property belongs to any promoter, officer, manager or liquidator of the institution, whether the property stands in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under subregulation (1) direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Civil Procedure Act relating to attachment of property shall, as far as may be, apply to such attachment.

10. Resignation of Board

The Board may, at any time, resign as liquidator of an institution upon giving written notice to the Official Receiver whereupon the Official Receiver shall become the liquidator of the institution unless and until another liquidator is appointed by the Court in accordance with the provisions of the Companies Act (Cap. 486).

BANKING (FEES) (AMENDMENT) REGULATIONS, 1994

[L.N. 220/1990, L.N. 240/1991, L.N. 188/1994.]

1. These Regulations may be cited as the Banking (Fees) (Amendment) Regulations, 1994, and shall come into operation on the 17th June, 1994.
2. The fees specified in the Schedule shall be payable prior to the granting of a licence to an institution to carry on business under the Act.
3. The Banking (Fees) Regulations, 1991 are revoked.

SCHEDULE

[Rule 2, L.N. 188/1994.]

FEES

	<i>Sh.</i>
1. (a) On the granting of a licence to an institution and each anniversary thereof....	400,000
(b) Additionally, in respect of each branch of an institution within a municipality	150,000
(c) Additionally, in respect of each branch of an institution within a town council area	100,000
(d) Additionally, in respect of each branch of an urban council area	30,000
2. On application for a licence to conduct business or open a branch as an institution	5,000
(a) On the application for an authority to establish a representative office	5,000
(b) On the granting of an authority to a representative office and each anniversary thereof	20,000

BANKING (PENALTIES) REGULATIONS, 1999

[Section 55(2), L.N. 77/1999, L.N. 164/1999.]

1. These Regulations may be cited as the Banking (Penalties) Regulations, 1999 and shall apply to all banks and other institutions licensed under the Act to conduct business in Kenya.

2. (a) Any institution or other person who fails or refuses to comply with any directions given by the Central Bank under the Act shall be liable to a penalty not exceeding one million shillings in the case of an institution, or one hundred thousand shillings in the case of a natural person.

(b) The Minister may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

3. (1) The following shall constitute specific violations by an institution of the directions given by the Central Bank which shall be subject to assessment of monetary penalties under these Regulations—

- (a) Loans, advances or other credit facilities granted by the institution to any person in excess of 25% of the institution's core capital;
- (b) outstanding unsecured advances to any of the institution's employees or their associates;
- (c) outstanding advances, loans or credit facilities which are unsecured or not fully secured—
 - (i) to any of its officers or their associates; or
 - (ii) to any person of whom or of which any of its officers has an interest as an agent, principal, director, manager or shareholder; or
 - (iii) to any person of whom or of which any of its officers is a guarantor;
- (d) outstanding advance, loan or credit facility to any of its directors or other person participating in the general management of the institution which—
 - (i) has not been approved by the full board of directors of the institution upon being satisfied that it is viable;
 - (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution; and
 - (iii) has not been reported to the Central Bank within seven days thereof as being approved under (i) above;
- (e) an aggregate of credit facilities to any one of the institution's shareholders, directors, officers or employees which is in excess of twenty per cent of the institution's core capital;
- (f) the aggregate of loans, advances and other credit facilities to share holders, directors, officers and employees is in excess of one hundred per cent of the institution's core capital;
- (g) failure of the institution to—
 - (i) exhibit its annual audited accounts, throughout each year, in a conspicuous place in every office and branch in Kenya; or

[Subsidiary]

- (ii) publish its annual audited accounts in a national newspaper within the number of months of the end of each financial year as prescribed under the minimum disclosure requirements prescribed from time to time by the Central Bank;
- (h) failure of the institution to submit, not later than three months after the end of its financial year, to the Central Bank its annual audited accounts and a copy of the auditor's report in the prescribed form;
- (i) failure of the institution to furnish, at such time and in such manner as the Central Bank may direct, such information in accurate and complete manner as the Central Bank may require to properly discharge its functions under the Act.

(2) Monetary penalties on non-compliance with other directions not covered herein above may be levied by the Central Bank.

[L.N. 164/1999, s. 2.]

4. (a) The Central Bank, after reviewing all available information and examining the existence of the contravention or violations of one or more of the provisions referred to herein, shall notify the institution in writing advising it of its findings and its decision to assess the penalties.

(b) A notification under (a) above shall advise the institution of a reasonable time-frame within which the violation shall be rectified.

5. Following the notification and expiration of the time-frame designated in 4 above, or sooner if advised by the institution of the correction of the violation, the Director of Bank Supervision of the Central Bank shall instruct the institution, in writing, as to the amount of monetary penalties assessed and the manner in which such monies shall be paid to the Central Bank.

6. (a) Where the Central Bank is not satisfied, either by evidence provided by the institution or information obtained by the Central Bank, that the violation has been rectified as directed, the daily monetary penalty prescribed in regulation 2(b) shall continue to accrue.

(b) Once the Central Bank is fully satisfied that the violation has been rectified, the daily penalty shall cease to accrue and the institution shall be assessed the aggregate penalty.

BANKING (DEPOSIT PROTECTION FUND) REGULATIONS, 2003

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Convening of Board meetings.
 4. Proceedings of the Board.
 5. Keeping of account and other records.
 6. Board to determine average deposit liabilities.
 7. Power of Board to waive contributions.
 8. Payments out of the Fund.
 9. Protected deposit defined.
 10. Liability of insolvent institution to the Board.
 11. Liquidator's duty to the Board.
 12. Furnishing of information by a liquidator or an institution.
 13. Inspection of books, etc.
 14. Revocation of L.N. 24/2002.
-

[Subsidiary]

BANKING (DEPOSIT PROTECTION FUND) REGULATIONS, 2003

[Section 55, L.N. 10/2003.]

1. Citation

These Regulations may be cited as the Banking (Deposit Protection Fund) Regulations, 2003.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Board**” means the Deposit Protection Fund Board established under section 36 of the Act;

“**contributory institution**” means a bank, a mortgage finance company of financial institution which has received a notice to contribute under section 38(2) of the Act;

“**Fund**” means the Deposit Protection Fund established by section 37 of the Act.

3. Convening of Board meetings

Meetings of the Board shall be convened by the chairman not less than once in every three months, or whenever the business of the Fund so requires.

4. Proceedings of the Board

(1) A quorum for any meeting of the Board shall be the four members and where the chairman is unable to attend any meeting of the Board the other members present may elect one of their number to be the chairman of the meeting.

(2) The validity of any proceedings of the Board shall not be affected by any vacancy in the membership of the Board, or by any defect in the appointment of any member which is discovered subsequent to those proceedings.

(3) The decision of the Board shall be authenticated by signature of the chairman or any other person authorized by the chairman for that purpose.

5. Keeping of account and other records

(1) Subject to the Act and these Regulations, the Board shall—

- (a) keep proper accounts and proper records in relation to its accounts; and
- (b) in every financial year, prepare a statement of accounts showing its state of affairs, income and expenditure.

(2) The accounts shall include contributions by contributory institutions and investment by the Fund.

(3) A statement of accounts prepared in accordance with subregulation (1) shall be audited by auditors appointed by the Board.

(4) For the purposes of this regulation, no person shall be appointed as an auditor unless he is qualified under section 161 of the Companies Act (Cap. 486) and is approved by the Central Bank.

(5) Members of the Board appointed by the Minister under section 36(4)(c) of the Act shall hold office for a period of four years and shall be eligible for re-appointment.

(6) The Board shall publish the report prepared under section 42(1) of the Act within three months of its submission to the Minister.

6. Board to determine average deposit liabilities

Subject to the Act, the average of a contributory institution's total deposit liabilities shall be the amount which the Board determines as representing its average deposit liabilities over a period of twelve months preceding the levying of contributions.

7. Power of Board to waive contributions

The Board may waive a contribution by a contributory institution if it appears to the Board that an institution which is licensed is carrying on substantially the same business as that previously carried on by one or more institutions which are, or were contributory institutions, but nothing in these Regulations shall entitle any institution to a repayment of the contributions previously made to the Fund.

8. Payments out of the Fund

(1) Whenever a contributory institution shall become insolvent in accordance with section 39(6) of the Act and if at that time the institution is a contributory institution whose deposits are protected, the Board shall, as soon as is practicable, pay out of the Fund by cash, cheque or bank transfer to a depositor who has a protected deposit with the institution an amount equal to his protected deposit.

(2) In the event of uncertainty of records, the Board may only pay such percentage of the protected deposit as it may deem appropriate in the circumstances.

(3) No account whatsoever shall be taken of any liability unless proof of the debt which gives rise to it has been given to the Board in such manner and at such times as the Board shall determine.

9. Protected deposit defined

(1) Subject to the Act, and in relation to a contributory institution, any reference to a protected deposit is a reference to the total liability of the institution to the depositor limited to a maximum of one hundred thousand shillings:

Provided that the Minister may, by Order, and with the approval of the Board, increase the sum specified under this regulation to a sum specified in the Order.

(3) In determining the liability of a contributory institution to a depositor, no account shall be taken of any liability in respect of a deposit if it is no longer protected or if it was made after termination of the protection of deposits of that institution under section 38(5) of the Act.

(4) In all cases before termination of protection of deposit, the Board shall publish a notice in the *Gazette* and in one national newspaper of its intention to terminate protection of deposits in an institution.

(5) Unless the Board otherwise directs, there shall be deducted the amount of any liability of a depositor to the contributory institution in respect of which a right of set-off existed immediately before the institution became insolvent in accordance with section 39 (6) of the Act against any such deposit or in respect of which such a right would then have existed if the deposit in question had been payable on demand and the liability in question had fallen due.

10. Liability of insolvent institution to the Board

(1) Subject to the Act and these Regulations, where a contributory institution is insolvent and the Board has made or is under a liability to make an insolvency payment to

[Subsidiary]

a depositor, the institution shall become liable to the Board, as in respect of contractual debt incurred immediately before the institution became insolvent, for an amount equal to the Board's liability.

(2) In all cases, no payment shall be made by the insolvent institution to a depositor unless full satisfaction has been given to the Board in respect of all moneys paid by the Board to the depositor.

(3) The liability of the insolvent contributory institution to a depositor shall be reduced by an amount equal to insolvency payment made or to be made by the Board to the depositor.

11. Liquidator's duty to the Board

The duty of the liquidator of an insolvent contributory institution shall be to pay to the Board instead of the depositor the amount referred to under regulation 8, and if the amount paid to the Board equals the insolvency payment made to the depositor by the Board, the liquidator shall thereafter pay to the depositor instead of the Board any excess amount.

12. Furnishing of information by a liquidator or an institution

The Board may, by notice in writing served on an contributory institution or the liquidator of an insolvent institution, require him or such institution at such place as may be specified in the notice to furnish to the Board such information and such books, papers or records as the Board may require to carry out its functions under the Act.

13. Inspection of books, etc.

Where as a result of a contributory institution having become insolvent, any books, papers or records have come into the possession of the official receiver or liquidator he shall permit any person duly authorized by the Board to inspect such books, papers or records.

14. Revocation of L.N. 24/2002

The Banking (Deposit Protection Fund) (Amendment) Regulations, 2002, are hereby revoked.

**BANKING (INCREASE OF RATE OF BANKING AND OTHER CHARGES)
REGULATIONS, 2006**

[L.N. 34/2006.]

1. These Regulations may be cited as the Banking (Increase of Rate of Banking and Other Charges) Regulations, 2006.
2. An application for approval of increase in the rate of banking or other charges under section 44 of the Act, shall be in the form set out in the Schedule and shall be submitted to the Minister through the Governor of the Central Bank of Kenya.
3. The Governor of the Central Bank of Kenya shall consider every application submitted under regulation 2 and shall, in particular—
 - (a) consider whether the proposed increase is in conformity with the Government's policy of entrenching a market-oriented economy in Kenya; and
 - (b) take into account the average underlying inflation rate prevailing over the twelve months immediately preceding the application, together with his comments thereon, to the Minister.
4. The Minister shall consider every application forwarded under regulation 3 in the manner set out in regulation 5.
5. (1) Where—
 - (a) the increase in the rate of banking or other charges applied for is below the average underlying inflation rate prevailing over the preceding twelve months as determined by the Central Bank of Kenya, the Minister shall communicate his decision to the applicant within fourteen days of the date of receipt of the application;
 - (b) the increase in the rate of banking or other charges applied for is above the average underlying inflation rate prevailing over the preceding twelve months as determined by the Central Bank of Kenya, the Minister may, if he deems it necessary, hold consultations with the applicant on the rationale for the proposed increase in the rate of banking or other charges before either granting or denying approval.

(2) In the case of an application falling under subregulation (1)(b), the Minister shall communicate his decision to the applicant within thirty days of the receipt of the application.
6. Every institution shall post, in a conspicuous position at every place of the institution's business in Kenya, the rates of banking and other charges levied on the products offered by the institution and shall submit a copy of the document so displayed to the Minister.
7. An institution seeking to introduce a new product shall, prior to charging, levying or imposing any rate or charge on the new product, notify the Minister in writing of the rate or charge applicable to the new product.

Banking

[Subsidiary]

SCHEDULE
[Regulation 2.]

FORM

APPLICATION FOR INCREASE IN THE RATE OF BANKING AND OTHER CHARGES

1. Name of Institution
2. Date of application
3. Proposed effective date of the proposed increase
4. Details of increase

<i>Type of rate or charge</i>	<i>Effective date of current rate or charge</i>	<i>Current rate or charge</i>	<i>Proposed rate or charge</i>	<i>Percentage increase</i>	<i>Justification for increase*</i>

Date

.....

(Signature of the Chief Executive Officer or the Chief Operating Officer)

* Extra sheet may be attached. The application should clearly set out in detail, justification for the proposed increase.

BANKING (CREDIT REFERENCE BUREAU) REGULATIONS, 2008

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation and commencement.
2. Interpretation.

PART II – ESTABLISHMENT AND LICENCING OF CREDIT REFERENCE BUREAUS

3. Qualification and prohibition to operate without a licence.
4. Application for licence.
5. Evaluation of application.
6. Inspection of premises and systems.
7. Issuance of licence.
8. Bank guarantee
9. Refusal to issue a licence.
10. Validity of the licence.
11. Annual licence fee.
12. Place of business.

PART III – OPERATION OF CREDIT REFERENCE BUREAUS

13. Activities of the Bureaus.
14. Nature of information to be shared.
15. Restrictions on the use of customer information.
16. Fees.
17. Data management and quality control.
18. Updating and maintaining information.
19. Security and control measures.
20. Customers' rights of access and correction.

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21. Composition and responsibility of the Board.
22. Criteria for appointment of directors.
23. Disqualification of officers and employees.
24. Fit and proper test.

PART V – POWERS OF THE CENTRAL BANK

25. Powers of the Central Bank.
26. Ownership of Information.
27. Periodic returns.

PART VI – GENERAL PROVISIONS

28. Responsibilities of institutions.
29. Compliance with guidelines, rules or directives.
30. Penalties.
31. Repeals.

Banking

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SCHEDULES

- FIRST SCHEDULE – APPLICATION FORM FOR A LICENCE TO
CARRYOUT THE BUREAU BUSINESS
- SECOND SCHEDULE – PERSONAL DECLARATION FORM FOR
INDIVIDUALS PROPOSED TO BECOME OFFICERS
OR SIGNIFICANT SHAREHOLDERS OF A BUREAU
- THIRD SCHEDULE – STATUTORY DECLARATIONS
-

BANKING (CREDIT REFERENCE BUREAU) REGULATIONS, 2008

[L.N. 97/2008, L.N. 17/2009.]

PART I – PRELIMINARY

1. Citation and commencement.

These Regulations may be cited as the Banking (Credit Reference Bureau) Regulations, 2008 and shall come into force at 2nd February 2009.

[L.N. 17/2009.]

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**adverse action notice**” means a notice issued by an institution to a customer conveying denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any loan, existing or applied for, or any other action or determination adversely affecting the customer, based on customer information obtained from a Bureau;

“**amendment notice**” means a written notice from an institution advising the Bureau of an amendment to credit information previously incorrectly reported to the Bureau by that institution;

“**Bureau**” means a credit reference bureau licensed under these Regulations;

“**credit information**” means any positive or negative information bearing on an individual’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including but not limited to the history and/or profile of an individual or entity with regard to credit, assets, and any financial obligations;

“**credit report**” means a customer information file containing a subject’s credit history compiled by a Bureau and may include publicly available information;

“**customer**” means any customer of financial services who has a formal engagement to receive services and products on agreed terms and condition from an institution licensed under the Act;

“**customer information**” means credit information, or any other positive or negative information provided by a customer or obtained from a third party, or public record information, which may be exchanged pursuant to this Regulations;

“**database**” means a set of customer information collected, managed and disseminated by a Bureau;

“**director**” means a member of the board of directors of a Bureau;

“**institution**” for the purposes of these Regulation, means an institution within the meaning of section 2 of the Act;

“**loan**” means direct, indirect and contingent obligations incurred by an individual or entity with third parties and includes any loan, discount, advance, overdraft, export bills purchased, other bills receivable or purchased, import bills, customers’, liability on off balance sheet items or any other credit facilities extended to a custom of an institution;

“**negative information**” means any adverse customer information relating to a customer including but not limited to—

- (a) dishonour of cheques other than for technical reasons;
- (b) accounts compulsorily closed other than for administrative reasons;

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- (c) proven cases of frauds and forgeries;
- (d) proven cases of cheque kiting;
- (e) false declarations and statements;
- (f) receiverships, bankruptcies and liquidations;
- (g) credit defaults or late payments on all types of facilities;
- (h) tendering of false securities; and
- (i) misapplication of borrowed funds;

“non-performing loan” means customer information relating to a customer’s non-performing loan as defined by the Central Bank in Prudential Guidelines issued under Section 33(4) of the Act;

“notice of change” means a written notice sent by the Bureau to an institution concerning a significant change to customer information that had previously been obtained by the institution from the Bureau no more than twelve months prior to the notice of change;

“notice of resolution” means a written notice from an institution to the Bureau, advising the results of an investigation the institution has made into customer information previously reported to the Bureau by the institution where the customer has disputed the accuracy of information reported;

“performing loan” means a performing loan as defined by the Central Bank in Prudential Guidelines issued under Section 33(4) of the Act;

“place of business” means the premises of a Bureau where Bureau business is or intended to be carried out, whether it is owned by the Bureau, leased or rented.

“officer” means any person who takes part in the general management of a Bureau and includes the secretary to the board, the chief executive officer, deputy chief executive officer, chief financial officer, treasurer, chief internal auditor, or manager of a significant unit of the Bureau or a person with a similar level of position or responsibility;

“significant shareholder” means a person other than the Government or a public entity, who holds directly or indirectly or otherwise has a beneficial interest in more than ten per cent of the share capital of a Bureau or if it is proposed that such a person shall so hold or have such a beneficial interest;

“subscriber” means an institution subscribing to receive customer information from a Bureau, and

PART II – ESTABLISHMENT AND LICENSING OF A BUREAU

3. Qualification and prohibition to operate without a licence

(1) A person shall not establish or operate a bureau or carry out or conduct Bureau business in Kenya or otherwise hold himself out to the public as engaging in any Bureau business for the benefit of institutions licensed under the Act unless such person is—

- (a) established and incorporated as a limited liability company under the Companies Act (Cap. 486); and
- (b) licensed under these Regulations.

(2) A person who contravenes the provisions of this Regulation commits an offence and shall, on conviction, be liable to a fine of one hundred thousand shillings or to imprisonment for a term of six months or to both.

4. Application for a licence

(1) An application for a licence to conduct credit reference Bureau business shall be made to the Central Bank in the prescribed form set out in the First Schedule.

(2) The application shall be accompanied by the following information and supporting documents and any other information that the Bureau considers necessary or as may be required by the Central Bank from time to time—

- (a) certified copies of the applicant's certificate of incorporation and its memorandum and articles of association;
- (b) feasibility study by the applicant, showing the nature of the planned business, organizational structure and internal control systems and monitoring procedures of the company, covering, *inter-alia*, the following aspects—
 - (i) market analysis;
 - (ii) ownership structure;
 - (iii) governance and management structure;
 - (iv) business plan;
 - (v) business continuity plan;
 - (vi) operation manuals that ensure the accuracy of the information contained in its database as well as the timely updating of the information, through signing of contracts with information sources which must be known to the Central Bank and the manuals must include query module manual of the applicant, data loading module manual, source quality control manual, maintenance module manual, security module manual, operating manual, user manual, and manual for procedures for handling complaints;
- (c) sworn declarations of proposed directors, officers and significant shareholders in the forms set out in the Second Schedule;
- (d) management processes, including—
 - (i) development schedule of the software required for operation;
 - (ii) characteristics of products and services to be provided to subscribers;
 - (iii) service provision policies and procedures manuals; and
 - (iv) proposed security and control measures aimed at preventing misuse or improper management of information;
- (e) overview of operations including the description of systems and the design of the data collection including the unique identification system for individuals and enterprisers that is adequate to ease the collection of data and handling of the database;
- (f) a description of the applicant's premises and the suitability for customer service and the description of the security measures to be adopted;
- (g) the proposed fees structure;
- (h) a prototype of the final product that demonstrates the principal features and functions of the system; and
- (i) a banker's cheque of ten thousand shillings payable to the Central Bank, being non-refundable application processing fee.

[Subsidiary]

5. Evaluation of application

When evaluating an application for a licence to operate a credit references Bureau business in Kenya, the Central Bank shall take into account all relevant matters within its discretion including the following—

- (a) the background, reputation, integrity, experience and capacity of the proposed directors and significant shareholders of the applicant as evidenced by amongst others, the curriculum vitae and professional records of the proposed persons;
- (b) the business plan of the applicant, including a mechanism to integrate, gather, input, update and validate the data; and
- (c) the design of data collection for customer information and flexibility in structuring the information in accordance with the Act and these Regulations or other guidelines that may be issued by the Central Bank under section 31(3) and (4) of the Act.

6. Inspection of premises and systems

(1) An applicant shall submit to the Central Bank a security audit report prepared by a registered audit firm giving expert opinion on the suitability of the premises, adequacy of the management information systems, and any other aspects that may be considered relevant with respect to Bureau operations.

(2) The Central Bank shall carry out on-site inspection of the applicant's premises to determine the adequacy of the applicant's safety and security system and to confirm—

- (a) suitability of the premises for Bureau operations;
- (b) adequacy of the management information system, administrative and operational processes and the internal control systems; and
- (c) security of information.

7. Issuance of licence

(1) A Bureau licence shall only be issued if the applicant meets the requirements set out in these Regulations.

(2) Where the Central Bank is dissatisfied with the adequacy of information submitted by the applicant for purposes of processing the application, the Central Bank may request for additional information before making a final determination.

(3) Where the Central Bank is satisfied that all the necessary requirements have been met, the Central Bank shall notify the applicant to submit to the Central Bank—

- (a) a bankers cheque for one hundred thousand shillings payable to the Central Bank being licence fee;
- (b) a statutory declaration in the form set out in the third schedule sworn under oath by the chief executive officer of the applicant confirming that the applicant will adhere to the provisions of these Regulations and in particular, the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided herein.

(4) Where the Central Bank is satisfied that the requirements of sub-regulation (3) have been complied with; the Central Bank shall issue a licence to the applicant permitting it to carryout the Bureau business operations.

8. Bank guarantee

(1) Where a Bureau is licensed under these Regulations, it shall within thirty days of being granted licence submit to the Central Bank an irrevocable bank guarantee for one million shillings in a format acceptable to the Central Bank.

(2) Where a Bureau is required to pay a penalty under these Regulations and fails to do so within such time as may be prescribed by the Central Bank, the Central Bank may recover the amounts due on the penalty from the bank guarantee issued under sub-regulation (1).

(3) Where a penalty has been recovered from the bank guarantee in accordance with sub-regulation (2), the Bureau shall within thirty days of being notified, furnish the Central Bank with a new irrevocable Bank guarantee of one million shillings, in a acceptable to the Central Bank.

(4) Where a Bureau fails to comply with sub-regulation (1) and (3), it's licence shall be revoked.

9. Refusal to issue a licence

(1) Where the requirements of issuance of a licence as provided in these Regulations are not met, the Central Bank may refuse to grant a licence to an applicant.

(2) An aggrieved party may appeal to the Minister within fifteen days after being notified of the refusal.

(3) In considering an appeal under sub-regulation (2), the Minister shall have consideration to the material in the administrative record developed by the Central Bank and may not consider information or events that occurred after the Central Bank took its decision.

(4) The Minister may reverse the decision of the Central Bank only if—

- (a) the Central Bank failed to follow the laid down procedure;
- (b) the Central Bank's decision was contrary to law;
- (c) there was no factual basis for the Central Bank's decision; or
- (d) based on a review of the record, the Central Bank committed a manifest error in its assessment of facts, or abused its discretion.

(5) The Central Bank shall be bound by the decision of the Minister.

10. Validity of the licence

A licence issued under these Regulations shall remain valid unless revoked.

11. Annual licence fee

(1) A Bureau shall be required to pay to the Central Bank an annual licence fee of one hundred thousand shillings.

(2) The annual licence fee prescribed in subregulation (1) shall be paid before the anniversary date.

(3) A Bureau that fails to pay the annual licence fee before the anniversary date shall pay double the licence fee, if payment is made within ninety days after the anniversary date.

(4) If a Bureau fails to pay the fees within ninety days after the anniversary date as prescribed in subregulation (3), its licence shall be revoked.

(5) In this regulation, "**anniversary date**" means the date when the bureau was issued with a licence.

[Subsidiary]

12. Place of business

A Bureau must obtain approval from the Central Bank before opening a branch or relocating and shall notify the Central Bank three months prior to closing its place of business.

PART III – OPERATIONS OF BUREAUS

13. Activities of the Bureau

(1) A Bureau licensed under these Regulations may engage in the following activities—

- (a) obtain and receive customer information;
- (b) store, manage evaluate, update and disseminate the customer information to subscribers in accordance with these Regulations;
- (c) compile and maintain database and generate report from customer information database;
- (d) asses the creditworthiness of a customer;
- (e) sell to institutions specialized literature and other informational material related to its activities;
- (f) carry out market and statistical research relating to maters set out under these Regulations; and
- (g) carry out any other activity as may be approved by the Central Bank from time to time in accordance with the Act.

(2) A Bureau shall not engage in activities other than those specified in these Regulations or as approved by the Central Bank in accordance with the Act.

(3) Where a Bureau fails to comply with sub-regulation (2) it shall be liable to pay a penalty of five hundred thousand shillings and in the case of continued failure, it shall be liable to an additional penalty of ten thousand shillings for each day on which such failure continues.

14. Nature of information to be shared

(1) Customer information which shall be exchanged pursuant to these Regulations is any customer information concerning a customer's non-performing loans, and may include details specified in subregulation (2).

(2) Customer information which may be exchanged pursuant to these Regulations is any customer's information performing loans, and may include details specified in sub regulation (3).

(3) The nature of customer information to be shared pursuant to subregulation (1) and (2) include—

- (a) the customers identity, including—
 - (i) in the case of a natural person his name, date of birth, national identity card number, personal identification number, passport number, driving licence number, past and current addresses and other contact details and related matters;
 - (ii) in the case of a customer who is not a natural person, its name, registration number, personal identification number, names of directors, share holders or partners, past and current addresses and other contact details and related matters;
- (b) the customer's employment, income, career, professional or business history, and related matters;

[Subsidiary]

- (c) the customers credit history, including the nature and amounts of loans or advances and other credit facilities granted or to be granted to a customer, amounts outstanding thereof and related matters;
- (d) the nature and details of security or securities taken or proposed to be taken by an institution as security for the loans, advances and other credit facilities mentioned in sub-regulation (c), and related matters;
- (e) details of patterns of payment of credit facility or default in payment by the customer debt restructuring and actions taken by the institution to recover unpaid amounts including realization of securities, legal proceedings and related matters.

(4) Customer information shall be furnished using a standard format established by the agreement of the institution furnishing information and licenced Bureaus, or otherwise issued by the Central Bank.

(5) The nature of information to be shared under this regulation shall not adversely affect the rights and freedoms of the customer.

15. Restrictions on the use of customer information

(1) A Bureau shall—

- (a) protect the confidentiality of customer information received in terms of these Regulations and shall only report or release such customer information—
 - (i) the customer concerned;
 - (ii) to the Central Bank of Kenya;
 - (iii) authorized in writing by the customer concerned; or
 - (iv) as required by law.
- (b) utilize the information collected solely for the purposes set out in these Regulations;
- (c) take all such steps as are reasonably necessary to ensure that the customer information maintained by it is duly protected against any loss or unauthorized access or use or unauthorized disclosure;
- (d) ensure that the customer information maintained by it is not mortgaged or charged for any purpose whatsoever;
- (e) observe, through its shareholders, directors, officers, employees or agents, a perpetual duty of confidentiality with regard to the information divulged to them in terms of these Regulations.

(2) A Bureau shall only release customer information in accordance with sub-regulation (1)(a)(iii) to a subscriber—

- (a) that requires customer information to evaluate a customer's application for credit or other customer-initiated business transaction;
- (b) that has certified to the Bureau that it will use the customer information for the purpose of making a permitted eligibly decision and for no other purpose; and
- (c) that has agreed to properly dispose of customer information so that it cannot reasonably be read or reconstructed.

(3) No subscriber of information from a Bureau shall use such information for any purpose other than for reaching decisions on the business of the subscriber in the ordinary course of such business.

[Subsidiary]

(4) Under no circumstances may a subscriber release such information to any third party other than the subscriber's appointed agent for the purpose of assisting the subscriber in the recovery of any of its debts.

(5) A Bureau or a person who fails or refuses to comply with sub-regulation (1) shall be liable to penalty of five hundred thousand shillings in the case of a natural person.

16. Fees

(1) A bureau may charge such fees, for its services, as shall be agreed between the subscribers and the Bureau.

(2) The Bureau shall notify Central Bank of such fees through periodic returns submitted in accordance with regulation 27.

17. Data management and quality control

A bureau shall—

- (a) implement strict quality control procedures in order to ensure the maximum possible accuracy of its database and the continuity of its services;
- (b) utilize the information collected solely for the purpose set out in these Regulations; and
- (c) take all such steps as are reasonably necessary to ensure that customer information maintained by it is current, authentic, legitimate, reliable, accurate, truthful and that it reflects the existing situation of the subject at any given time and any given time and if the information is found to be illicit, inaccurate or no longer valid, the Bureau shall promptly take the corrective measures necessary to remedy the deficiencies.

18. Updating and maintaining information

(1) A Bureau shall retain customer information on non-performing loans until the expiry of seven years from the date of final settlement of the amount in default (including settlement of the amounts payable pursuant to a scheme of arrangement with the institution); or upon the expiry of seven years from the date of the person's discharge from bankruptcy, as notified to the Bureau by such person as evidenced by the relevant certificate of discharge issued by the High Court or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the person, irrespective of any write-off by the institution of the amount in default in full or in part at any time.

(2) Information kept in accordance with sub-regulation (1) may not be used solely to affect the customer's chances of obtaining credit but to inform the decision making process.

(3) A Bureau shall implement procedures that ensure that the information registered in its database is updated on an ongoing basis.

(4) An institution that furnishes customer information to a Bureau shall, on a monthly basis or within such earlier time as an update is necessary, ensure that the customer information furnished is consistently updated.

(5) A Bureau shall take update its data base as and when information is provided by the institutions responsible for the timely updating of the information submitted to the Bureau and the information shall be updated on an ongoing basis, or as often as necessary, in accordance with the nature of the information.

19. Security and control measures

(1) A Bureau shall take the necessary security and control measures in order to avoid unauthorized access to, improper use or mismanagement of information.

(2) For the purposes of sub-regulation (1), improper use or mismanagement of information means any act or omission not authorized by these Regulations.

(3) A Bureau shall record and make available to the customer the name and date each subscriber obtains access to customer information about the subject.

20. Customer's rights of access and correction

(1) A customer has a right to know what information the institution has submitted to the Bureau regarding that customer.

(2) A customer shall be entitled to access credit report relating to the customer that is kept in a database administered by a Bureau.

(3) A customer shall be entitled to free copy of the customer's credit report at least once per year and within thirty days of receiving an adverse action notice issued under regulation 28(1)(b).

(4) Where a customer requests a Bureau for a credit report pursuant to subregulation (2), the Bureau shall, within five working days of receiving a request in writing and such particulars as the Bureau may reasonably require to enable it to identify the customer, provide to the customer a copy of all customer information relating to the customer held by the Bureau.

(5) Where the customer believes that the information contained in the database is inaccurate, erroneous or outdated, the customer may notify the Bureau in writing of the information disputed.

(6) Within five working days of being informed that information in a customers' credit report is disputed, the Bureau shall—

- (a) attach a note credit information report, warning that the disputed information is under investigation, which notice shall remain on the file until resolution of the dispute; and
- (b) give the institution that supplied the information a notice of dispute requesting confirmation from the institution as to the accuracy of the information.

(7) Within fifteen working days, the Bureau shall conduct a reasonable investigation, based on all relevant information provided by the customer, and contacting the furnisher of the information as necessary.

(8) Where an institution receives a notice of dispute from the Bureau it shall, within ten working days of receiving the notice, complete all necessary investigations into the disputed information and give the Bureau a notice of resolution, advising whether the disputed information is to be deleted, corrected, or remain unchanged.

(9) Where the investigation reveals an error, the Bureau shall promptly remedy the error.

(10) If the Bureau does not complete its investigation, within fifteen days, it shall delete the disputed or correct information as requested by the customer.

(11) If the Bureau later completes its investigation, it may re-insert or revise disputed information based on the results of such investigation.

[Subsidiary]

(12) Upon receipt of a notice of dissolution or an amendment notice from an institution the Bureau shall, within five working day of such receipt, send a notice of change to any subscriber that has in the previous twelve months obtained a credit information report from the Bureau containing the incorrect information.

(13) Should the customer disagree with the resolution of the disputed information, the customer may request the Bureau to attach a statement of not more than one hundred words to the customer's credit report, setting out the customer's claim that the information is not accurate and the Bureau shall take reasonable steps to comply with the customer's request.

(14) A Bureau may charge the customer for the reasonable cost of its services in conducting an investigation of disputed customer information only if the information disputed by the customer turns out to be true.

PART IV – GOVERNANCE AND MANAGEMENT OF BUREAUS**21. Composition and responsibilities of the board**

(1) Every Bureau shall have a board of directors consisting of not less than five directors.

(2) A person shall be qualified for appointment as a director, if such person is—

- (a) approved by the Central Bank for that purpose; and
- (b) is not disqualified from holding office as such under these Regulations.

(3) The board of directors shall elect a non-executive chairman from amongst their members.

(4) Members of the board of directors shall—

- (a) have an overall understanding of the operations and information technology systems of the Bureau;
- (b) meet at least once quarterly;
- (c) ensure that the activities conducted in all offices of the Bureau are in full conformity with these Regulations;
- (d) facilitate the appointment of a competent chief executive officer and chief information technology officer;
- (e) ensure that the Bureau maintains, at all times, an effective systems of internal controls;
- (f) ensure that the Bureau maintains a customer claims and inquiry service section to attend to customers who may be affected by the information contained in the database and who allege that the information is illegal, inaccurate, erroneous or outdated; and
- (g) ensure that the Bureau has adequate staff to undertake the functions of the Bureau and to sufficiently meet customers demands.

22. Criteria for appointment of directors

A person shall not be qualified to hold office as a director if such person—

- (a) is a minor or is under a legal disability;
- (b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;
- (c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years; or

[Subsidiary]

- (d) is an auditor of the Bureau licensed under these Regulations or associated companies.

23. Disqualification of officers and employees

(1) A Bureau shall ensure that no person shall be an officer or an employee of a Bureau, or, if-already in office or employment, shall be disqualified and shall not thereafter be eligible to hold office or be in the employment of any Bureau for a period of ten years, if such person is—

- (a) an undischarged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) convicted of an offence involving fraud or dishonesty; or
- (c) removed from office under the provisions of these Regulations.

(2) Where a Bureau allows a disqualified person to continue acting as an officer or being in employment, or is otherwise in breach of this regulation, it shall be liable to a penalty of five hundred thousand shillings and the disqualified person acting as an officer or employee shall be liable to pay a fine of one hundred thousand shillings.

24. Fit and proper test

(1) The Central Bank shall, where it is satisfied as to the professional and moral suitability of a significant shareholder, or officer of the Bureau, certify that such person is fit and proper to be a significant shareholder or officer.

(2) In order to determine, for the purposes of this Regulation, the professional and moral suitability of a significant shareholder or officer of a Bureau the Central Bank shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- (a) his general probity;
- (b) his competence and soundness of judgment for the fulfillment of the responsibilities of the office in question; and
- (c) the diligence with which the person concerned is likely to fulfill those responsibilities.

(3) For the purposes of these Regulations and without prejudice to the generality of the provisions of sub-regulation (2), the Central Bank may have regard to the previous conduct and activities of the person concerned in the Bureau business, and in particular, to any evidence that such person—

- (a) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
- (b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;
- (c) was an officer of an institution that has been liquidated or is under liquidation or statutory management under the relevant law;
- (d) has taken part in any business practices that in the opinion of the Central Bank were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; or
- (e) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment.

[Subsidiary]

(4) The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person as prescribed in these Regulations or as deemed necessary.

PART V – POWER OF THE CENTRAL BANK**25. Powers of the Central Bank**

(1) The Central Bank shall have the powers to regulate and supervise all Bureaus licensed under these Regulations.

(2) The Central Bank may issue directions, guidelines or rules generally for the better carrying out of its supervisory functions under these Regulations.

26. Ownership of Information

The Information held by the Bureau remains the property of the Central Bank and where a bureau winds up the information shall revert to the Central Bank.

27. Periodic returns

(1) The Bureau shall furnish the Central Bank with periodic reports of their business operations, including annual systems report, in such form as the Central Bank may from time to time require.

(2) A Bureau which fails or refuses to comply with this regulations or which furnishes the Central Bank with an incomplete, inadequate, inaccurate or late return shall be liable to a penalty of five hundred thousand shillings.

PART VI – GENERAL PROVISIONS**28. Responsibilities of institutions**

(1) Institutions shall be required to—

- (a) notify each customer of the name and address of the Bureaus to which the customer's information has been submitted these Regulations, within thirty days of the first listing of the customer's information with the Bureaus;
- (b) issue an adverse action notice to a customer against whom a decision has been taken or determination made, in whole or in part, that is adverse to the interests of the customer based on information obtained from a Bureau;
- (c) the adverse action notice shall be provided at the time the adverse decision or determination is communicated to the customer and shall notify the customer—
 - (i) that customer information played a role in the decision;
 - (ii) the name, address and telephone number of the Bureau that provided the customer information;
 - (iii) the customer's right to a free copy of the information provided by the Bureau, and
 - (iv) the customer's right to dispute such information with the bureau and, if erroneous or outdated, have it corrected.

(2) Institutions shall be deemed to have notified the customer if they send the notifications issued subsequent to sub-regulation (1) to the customer's last known address by registered mail or by certificate of posting.

(3) Institutions shall be responsible for providing accurate information to Bureaus.

(4) Institutions shall be entirely responsible and under obligation to submit and update all customer information to the Bureau in accordance with these Regulations.

[Subsidiary]

(5) Where an institution has provided customer information to the bureau and subsequently becomes aware that the information was inaccurate at the time of it was provided, the institution will within five working days from the day the institution becomes aware of the inaccuracy, give the Bureau an amendment notice instructing it to delete the inaccurate information and replace with the correct information.

(6) Institutions shall ensure that the customer information furnished pursuant to regulation 14(3) is provided to all licensed Bureaus.

29. Compliance with guidelines, rules or directives

(1) For purposes of performing its activities and obligations under these Regulations, a Bureau shall comply with any guidelines, rules or directives issued by the Central Bank.

(2) A Bureau or a person who fails or refuses to comply with any guidelines, rules or directives issued by the Central Bank under regulation 25(2) shall be liable to a penalty of five hundred thousand shillings in the case of a Bureau or, one hundred thousand shillings in the case of a natural person.

(3) For the purposes of sub-regulations (1), the Central Bank may request, at any time, any information it may require in order to evaluate any matter arising from these Regulations or from the operations of the Bureau.

30. Penalties

(1) Where a Bureau—

- (a) is in breach of, or fails to adopt or implement the data management and quality control measures outlined in regulation 17; or
- (b) is in breach of or fails to update and maintain information as required in regulation 18; or
- (c) is in breach of or, fails to observe or adhere to the security and control measures outlined in regulation 19; or
- (d) wrongfully alters, modifies or deletes records from its database; or
- (e) fails to adopt security and control measures that are necessary to prevent the unauthorized access to, or wrongful use and management of information,

it shall be liable to pay a penalty of five hundred thousand shillings and in the case of continued failure, it shall be liable for an additional penalty of ten thousand shillings for each day on which such failure continues.

(2) Where an institution contravenes any of the provisions of these Regulations the Central Bank may pursue any or all of the remedial actions provided for under the Act.

(3) Before imposing a penalty on any Bureau under these Regulations, the Central Bank shall give not less than seven days notice in writing requiring the Bureau to show cause why the penalty prescribed should not be imposed.

(4) Where a penalty is prescribed under these Regulations, such penalty shall—

- (a) be paid to the Central Bank;
- (b) be paid within ten days unless otherwise stated;
- (c) in the first instance, be paid by the Bureau; and
- (d) where the Bureau fails to make payment, in the second instance, be paid immediately by the bank issuing the bank guarantee upon being called upon to do so by the Central Bank.

(5) Where no payment is made or received under subregulation (4)(d), the licence of the Bureau shall be revoked.

Banking

[Subsidiary]

(6) Where any provision of this Regulations imposes a penalty on any Bureau, the amount of the penalty shall constitute a debt due from the Bureau to the Central Bank, and the Central Bank may—

- (a) in addition to the provisions of sub Regulation (4), sue the Bureau for the recovery of the penalty;
- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the Bureau and the officers concerned, shall constitute a debt payable by the Bureau and the particular officers of the Bureau specified in the notification; and, the Central Bank shall be entitled to recover from that Bureau and officers jointly and severally.

31. Repeals

The Banking (Exchange of Information) Regulations, 2004, are repealed.

FIRST SCHEDULE

[Regulation 4(1).]

APPLICATION FORM FOR A LICENCE TO CARRY OUT THE BUREAU BUSINESS

- 1. Name:
- 2. Former name(s) (if any) by which the applicant has been known:
- 3. Head/main office:
- (a) Address:
- (b) Telephone No:
- (c) Telefax No:
- 4. Branches (Including physical location):

Subsidiaries & affiliates:

<i>Name and type of business</i>	<i>Amount of shares held</i>	<i>% of shares held in total</i>
.....
.....
.....

5. Management:

(1) Board of Directors:

<i>Name:</i>	<i>Designation</i>	<i>Present term</i>	<i>No. of years as board member</i>
.....
.....
.....

Board committees

<i>Name and purpose of committee(s):</i>	<i>Names of members:</i>
.....
.....
.....

(2) Officers:

<i>Name:</i>	<i>Position:</i>	<i>No. of years as officer</i>
.....
.....

FIRST SCHEDULE—continued

6. Ownership profile:

Name	Country of citizenship	Residence	Paid up capital	%
1.
2.
Other shareholders owing less than 5% (Number)				
TOTAL			

7. Organisation profile:

- (a) Organisation Chart - Attach one indicating major department or divisions with names, positions and titles of officers heading each department or division.
- (b) Functions - Attach a list of functions or responsibilities for each department or division listed in the organization chart indicating the number of personnel or staff for each.
- (c) Qualifications of significant shareholders, directors and officers.
- (d) Annex personal declaration form of each significant shareholder and officer and an information sheet for each significant corporate shareholder.
- (e) Powers and purposes – Attach the latest copies of the Memorandum and Articles of Association if not previously submitted to the Central Bank.

8. Shareholding in any other financial institution:

Name of Financial Institution	Shares owned-amount	Number	% of capital
.....
.....
.....

9. Name(s) and address(es) of the applicant's bankers within the last 10 years. (please also indicate the applicant's principal bankers)

10. Name and address of the applicant's external auditors

11. Does the applicant hold, or has it ever held, any authority from a supervisory body to carry on any business activity in Kenya or elsewhere? If so, give particulars. If any such authority has been revoked, give particulars

12. Has the applicant ever applied for any authority from a supervisory body to carry on any business in Kenya or elsewhere other than the authority mentioned in answer to Question 11? If so, give particulars. If any such application was for any reason refused or withdrawn after it was made, give particulars

13. Has the applicant or any company in the same group within the last 10 years failed to satisfy a judgment debt under a court in Kenya or elsewhere within a year of the making of the order? If so, give particulars

14. Has the applicant or any company in the same group made any compromise or arrangement with its creditors within the last 10 years or otherwise failed to satisfy its creditors in full? If so, give particulars

Banking

[Subsidiary]

FIRST SCHEDULE—continued

- 15. Has a receiver or an administrative receiver of any property of the applicant or any company in the same group been appointed in Kenya, or has a substantial equivalent of any such person been appointed in any other jurisdiction, in the last 10 years?

 If so, give particulars including whether the receiver is still acting under the appointment

- 16. Has a petition been served in Kenya for an administrative order in relation to the applicant or company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?

 If so, give particulars
- 17. Has a notice of resolution for the voluntary liquidation of the applicant or any company in the same group been given in Kenya, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?

 If so, give particulars
- 18. Has a petition been served in Kenya for the compulsory liquidation of the applicant institution or any company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?

 If so, give particulars
- 19. State whether the applicant company has ever been under any criminal investigation, prosecution disciplinary action(s), public criticism or trade sanctions in connection with banking and financial services in Kenya or elsewhere
- 20. Are there any material matters in dispute between the applicant company and the Kenya Revenue Authority or any equivalent tax authority in any other jurisdiction?

 If so, give particulars
- 21. Is the applicant company engaged or does it expect to be engaged, in Kenya or elsewhere, in any litigation which may have a material effect on the resources of the institution?
 If so, give particulars
- 22. Is the applicant company engaged, or does it expect to be engaged, in any business relationship with any of its (prospective) officers?

 If so, give particulars
- 23. Is the business of the applicants' officers or of the companies connected with the applicant guaranteed or otherwise underwritten or secured, or expected to be guaranteed or underwritten or secured, by the applicant company?
 If so, give particulars
- 24. Please provide any other information which may assist the Central Bank in reaching a decision on the application

Banking

[Subsidiary]

FIRST SCHEDULE—continued

DECLARATION

We certify that all the information contained in and accompanying this form is accurate and complete to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the Central Bank should be aware. We undertake to inform the Central Bank of any material changes to the application which may arise while the Central Bank is considering the application. We further undertake that, in the event that the institution is granted a licence under these Regulations we will notify the Central Bank of any material changes to or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty days after the date that the changes come to our attention.

Sworn at Nairobi this day of

1.

Name Position held

Signed Date

2.

Name Position held

Signed Date

Deponent understands the contents of this affidavit before me,

COMMISSIONER FOR OATHS

N.B.

- 1. All sections of this form must be filled
2. If any space provided is inadequate, the required information may be supplied as an attachment labeled accordingly and reference shall be made to the relevant section of the form by placing the words "REFER TO ANNEX ..."
3. Information provided in this form is confidential and cannot be made available without the consent of the Governor of the Central Bank.

SECOND SCHEDULE

[Regulation 4 (2)(c).]

PERSONAL DECLARATION FORM FOR INDIVIDUALS PROPOSED TO BECOME OFFICERS OR SIGNIFICANT SHAREHOLDERS OF A BUREAU

Name and capacity of person making this declaration:

1. Name of Bureau in connection with which this form is being filled:

2. Full names of deponent:

3. Former surname(s) and/or forenames by which you may have been known:

4. Please state the capacity in which you are completing this form, i.e. as a current or prospective officer or any combination of these. Please state your full title and describe the particular duties and responsibilities attaching to the position(s) which you hold or will hold. If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the applicant's business. In addition, please provide a copy of your curriculum vitae unless it is already provided by the applicant in response to Schedule 1

Banking

[Subsidiary]

SECOND SCHEDULE—continued

5. Date and place of birth:

6. (1) Citizen of: (2) Resident of:
(Country) (Country)

Since: Since:
(Year) (Year)

7. Addresses:

(1) Present business address:
(Kenya since) (Outside Kenya since)

(2) Present residential address:
(Kenya since) (Outside Kenya since)

(3) Last two addresses in Kenya, if any, during the past ten (10) years:
(Since) (Since)

8. Professional & academic qualifications:

Particulars Year obtained

(1) Highest academic qualification
.....
.....
.....

(2) Special awards or honors (if any)
.....
.....
.....

(3) Training courses and seminars
.....
.....
.....

(4) Membership in professional organizations
.....
.....
.....

9. Occupation or employment (Present or most recent and for the past ten years)

Name & business of employer Positions held Inclusive date (month & year) from year
.....
.....
.....
.....

SECOND SCHEDULE—continued

- 10. Name and address(es) of your bankers within the last 10 years
.....
.....
.....
- 11. Bodies corporate (other than the applicant) where you are now an officer, shareholder, or manager? Give relevant dates
.....
.....
.....
- 12. Bodies corporate other than the applicant and those listed above where you have been a director, shareholder, controller or manager at any time during the last 10 years. Give relevant dates
.....
.....
.....
- 13. Have you, in Kenya or elsewhere, been dismissed from any office or employment, or been subjected to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so give particulars:
.....
.....
.....
- 14. Past and present business affiliations (direct and indirect):

<i>Nature of business</i>	<i>Nature of affiliation i.e. director, officer, share holder with 5% and above year) specified etc. to</i>	<i>Inclusive date (month and from)</i>

- 15. Do any of the above business affiliations maintain a business relationship with the institution? If so, give particulars:
.....
.....
.....
- 16. Do you hold or have you ever held or applied for a licence or equivalent authorization to carry on any business activity in Kenya or any other country? If any such application was refused or withdrawn after it was made or any authorization was revoked, give particulars:
.....
.....
.....
- 17. State whether the applicant with which you are, or have been, associated as a significant shareholder or officer holds, or has ever held or applied for a licence or equivalent authorization to carry on any business activity? If so, give particulars. If any such application was refused, or was withdrawn after it was made or any licence revoked, give particulars
.....
.....
.....

Banking

[Subsidiary]

SECOND SCHEDULE—continued

18. State whether any of your past or current employer(s) or institution in which you were affiliated as shareholder, officer, etc has ever been under criminal investigation, placed under receivership or insolvent liquidation by any regulatory body or court of law.

.....
.....

19. Family group: Business affiliation (State name of business and nature of affiliation i.e. director, officer, significant shareholder. Also indicate the nature of the family group member's relation to the Applicant. A family group member can be a spouse, child, parents, brothers or sisters)

Name of business	Nature of family member's affiliation to the business	Nature of the family group member's relation to the applicant
1		
2		
3		

20. Have you failed to satisfy any debt adjudged due and payable by you as a judgment debtor under an order of a court in Kenya or elsewhere or made any compromise arrangement with your creditors within the last 10 years? If so, give particulars:

.....
.....

21. Have you been adjudicated bankrupt by a court in Kenya or elsewhere or has a bankruptcy petition ever been served on you? If so, give particulars:

.....
.....

22. Have you, in connection with the formation or management of any body corporate, partnership or unincorporated institution, been adjudged by a court in Kenya or elsewhere, civilly liable for any fraud, misfeasance or other misconduct by you towards that body or company or towards members of it if so, give particulars:

.....
.....

23. Has any body corporate, partnership or unincorporated institution with which you are associated as a director, shareholder, controller or manager, in Kenya or elsewhere, been wound up, made subject to an administrative order, otherwise made any compromise or arrangement with its creditors or ceased trading either while you were associated with it or within one year after you ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:

.....
.....

24. Have you been concerned with the management or conduct of affairs of any institution which, by reason of any matter relating to a time when you were so concerned, has been censured, warned as to future conduct, disciplined or publicly criticized by, or made the subject of a court order at the instigation of any regulatory authority in Kenya or elsewhere?

If so, give particulars:
.....
.....

25. In carrying out your duties, will you be acting on the directions or instructions of any individual or institution?

If so, give particulars:
.....
.....
.....

SECOND SCHEDULE—continued

26. Do you, in your private capacity, or does any related party, undertake business with the applicant?

If so, give particulars:

27. How many shares in the applicant are registered in your name or the name of a related party? ..

If applicable, give name(s) in which registered and class of shares:

28. In how many shares in the applicant (not being registered in your name or that of a related party) are you or any party beneficially interested?

29. Do you or does any related party, hold any shares in the applicant as trustee or nominee?

If so, give particulars:

30. Are any shares in the applicant mentioned in answer to questions 27, 28 and 29 above equitably or legally charged or pledged to any party?

If so, give particulars:

31. What proportion of the voting power at any general meeting of the applicant (or another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?

32. Personal record of court cases or any investigation by governmental, professional or any regulatory body (including pending and prospective cases or on-going investigations):

Name of court or particulars of investigative body	Details of Status

33. Documentary requirements:

- (1) Certified statement of assets and liabilities;
- (2) Latest tax compliance certificate or certified true copy of income tax returns;
- (3) Two letters of character references from individuals other than relatives who have personally known the undersigned for at least ten years; and
- (4) Two letters, duly certified from financial institutions with whom the undersigned has had dealings for the last two years on the performance of past and present accounts such as unauthorised overdraft on deposit accounts, past due or delinquent accounts.

34. If this questionnaire is submitted in connection with an application for licensing, please provide any other information which may assist the Central Bank in reaching a decision on the application.

DECLARATION

I certify that all the information contained in and accompanying this form is complete and accurate to the best of my knowledge, information and belief and that there are no other facts relevant to this application of which the Central Bank should be aware.

Banking

[Subsidiary]

SECOND SCHEDULE—continued

I further undertake that, in the event that the Bureau is granted a licence under these Regulations, I will notify the Central Bank of any material changes to, or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty one days from the date that the changes come to our attention.

Sworn at Nairobi, this day of

Name

Position held

Signed

Date

I know and understand the contents of this declaration and that I am making it under oath.

Sworn at Nairobi, Kenya

This day of

Signature of deponent

(Position)

The deponent understands the contents of this affidavit.

Before me,

COMMISSIONER FOR OATHS

N.B.

- 1. All sections of this form must be filled
2. If any space provided is inadequate, the required information may be supplied as an attachment labelled accordingly and reference shall be made to the relevant section of the form by placing the words "REFER TO ANNEX ..."
3. Information provided in this form is confidential and cannot be made available without the consent of the Governor of the Central Bank.

THIRD SCHEDULE

[Regulation 7 (3)(6).]

REPUBLIC OF KENYA

IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT

[Cap. 15.]

STATUTORY DECLARATION

I, of (insert address) in the Republic of do hereby make oath and solemnly state as follows:

- 1. THAT I am the deponent herein hence competent to swear this affidavit.
2. THAT I am the Chief Executive Officer of (insert name of Bureau) hereinafter referred to as the Applicant.
3. THAT I am holder of (insert National registration card/Identification documentation details.)

THIRD SCHEDULE—continued

- 4. THAT I make this affidavit and hereby undertake that the applicant shall adhere to the provisions of these Regulations and in particular that the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided herein.
- 5. THAT the facts herein deponed to are true to the best of my knowledge, information and belief.

Sworn by at Nairobi this day of 2007)

)

) DEPONENT

)

Before Me

)

)

)

Commissioner for Oaths

)

EXEMPTION

UNDER SECTION 53 OF THE BANKING ACT

In Exercise of the powers conferred by section 53 of Banking Act (CAP.488), the Minister for Finance exempts the NIC Bank Limited from provisions of section 13(1) to a maximum threshold of thirty five per cent, for a period of one year with effect from the 1st July, 2012.
